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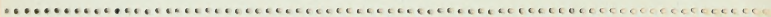
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## PREFACE.

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THIS volume, forming the Third Yearly Supplement to BUTTERWORTHS' TEN YEARS' DIGEST, is arranged on the same system of classification as was adopted in the original work. A new feature in this volume should be mentioned. There has been added this year a selection of those decisions in "BUTTERWORTHS' WORKMEN'S COMPENSATION CASES," which are not to be found reported elsewhere.

The volume comprises the decisions reported during the year 1910, but with a view to making the Digest as up-to-date as possible the references to the "Law Reports" and "Law Journal Reports" issued in January, 1911, have been added to those cases which were already included as having been reported in other series of reports or in the "Weekly Notes." Other important cases decided towards the end of the year 1910, and not yet fully reported, will be found noted in this volume, the notes being prepared from the daily law report in the *Times*, or from the weekly notes of cases in the various legal journals.

In a work of this nature copious cross references cannot be avoided without affecting its usefulness. It is hoped that in this volume they will be found sufficient.

It is desired to acknowledge the permission courteously granted to the Publishers of this Digest by the Council of Law Reporting for Ireland and by the Faculty of Advocates to make use of the headnotes contained in the Irish Reports and the Court of Session Cases respectively. A similar acknowledgment is due as in previous years to the publishers and editors of the "Irish Law Times" and the "Scottish Law Reporter."

H. C.

1, HARE COURT,  
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BUTTERWORTHS'

**Yearly Digest**

OF

REPORTED CASES FOR THE YEAR 1910.

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**III. GENERAL.**

1. *Contract—Right to Sue—Action by Person not named as Party—Beneficial Interest—Cestui que trust—No Refusal by Covenantor to Sue.*—A person not named as a party to a covenant is nevertheless entitled to maintain an action upon it if he takes a beneficial right under it in the character of *cestui que trust*, the covenantor standing to him in the relation of trustee. In such a case the plaintiff is not bound, as a condition precedent to his right of action, to show that the covenantor has been asked, and has refused, to sue.

*Gandy v. Gandy* ((1885) 30 Ch. D. 57) followed.

*Kelly v. Larkin*, [1910] 2 I. R. 550—Div. Ct., [Ireland.

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**(b) Actions in Rem.**

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(c) Limitation of Liability.

1. *Owners' Actual Fault or Privity—Agent or Servant—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), ss. 59, 503.]—Sect. 503 of the Merchant Shipping Act, 1894, which enables the owner of a ship to limit his liability for loss or damage where it has occurred without his "actual fault or privity," refers to the actual fault or privity of the owner himself, and not to that of his agent or servant. In the case of a ship owned by a railway company the "owners" are the general body of shareholders, and not the person who is registered under sect. 59 of the Act as managing owner or ship's husband.

THE YARMOUTH, [1909] P. 293; 79 L. J. P. 1; [101 L. T. 714; 25 T. L. R. 746; 11 Asp. M. C. 331—Deane, J.

(d) Salvage Action.

2. *Practice—Pleading—Admission of Facts—Denial of Inferences—Right of Plaintiffs to give Evidence at Trial—Amendment of Claim.*]—Several actions to recover salvage for services rendered were brought against the owners of the *Buteshire*, her cargo and freight, by the owners and crews of eight tugs and two lifeboats. After the various plaintiffs had delivered statements of claim an order was made consolidating the suits. The owners of the salvaged property then delivered a defence in the consolidated suit in which they admitted "the facts alleged in the various statements of claim, but not the inferences sought to be drawn from the said facts," and they submitted "themselves to the judgment of the Court thereon." The plaintiffs then had discovery of the defendants' log-books. On the hearing of the consolidated suit, counsel for some of the plaintiffs tendered the log-book of the defendants' vessel as evidence of the inference to be drawn from the facts; counsel for other plaintiffs applied for leave to amend the claim on behalf of the party for whom he appeared on the ground that the log-book disclosed a material fact which the plaintiffs could not have known when the claim was delivered.

HELD—that the plaintiffs were not entitled to call evidence or put in documents in support of their case, as the facts pleaded by them were admitted, and that no amendment could be allowed at the trial, as the application should have been made before trial after discovery had been obtained.

THE BUTESHIRE, [1909] P. 170; 78 L. J. P. [108; 100 L. T. 1005; 11 Asp. M. C. 278—Deane, J.

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See also AUCTIONS AND AUCTIONEERS; BILLS OF EXCHANGE; COMPANIES. No. 17; GIFTS, No. 1; HUSBAND AND WIFE; INSURANCE; MASTER AND SERVANT; SALE OF GOODS, No. 11; SHIPPING, No. 67; STOCK EXCHANGE, No. 2.

I. IN GENERAL.

1. *Broker—Charter-party—Parties to Contract—Broker Signing as Agent—Suing as Principal.*]—The plaintiffs, a firm of shipbrokers, on February 3rd, 1908, entered into a contract in charter-party form with the defendants, a firm of timber merchants, for the carriage of a cargo of timber in June, the freight to be paid being £1 1s. 6d. per standard. The plaintiffs signed the contract "by authority of and as agents for

### I. In General—Continued.

owners." In fact, the plaintiffs at that time had no principals, nor had they entered into any agreement for a ship to fulfil the contract. In May the plaintiffs entered into a charter with the owners of a steamer to carry the cargo of timber at a freight of £1 per standard, and they signed this charter as "agents for merchants," and in the body of it inserted the name of the defendants as charterers, whereas, in fact, they were not acting as agents for the defendants and made no contract between the defendants and the owners of the steamer. Bills of lading were signed reserving freight in accordance with the latter charter. The defendants paid the freight due under the bills of lading, and the plaintiffs sued them for the difference between that rate of freight and that due under the contract of February 3rd.

**HELD**—that as the plaintiffs in February, 1908, had no principals and were in fact contracting for themselves, they were entitled to sue on the contract of February 3rd, and that the defendants were liable for the freight reserved by that contract.

**H. G. HARPER & CO. v. VIGERS BROS.**, [1909] 2 K. B. 549; 78 L. J. K. B. 876; 100 L. T. 887; 25 T. L. R. 627; 53 Sol. Jo. 780; 14 Com. Cas. 213; 11 Asp. M. C. 275—Pickford, J.

**2. Conflict of Duties—Agent Instructed to Buy Shares—Agent having an Interest in Firm Selling Shares.**—An agent instructed by his principal to buy shares cannot himself sell shares to the principal, notwithstanding that he may not be remunerated for the sale.

**KING VIALI AND BENSON v. HOWELL**, 27 [T. L. R. 114—C. A.]

**3. Duty of Agent—Communication of Offers to Principal.**—Circumstances in which held that there was no duty on an agent to communicate to his principal an offer which the principal had previously informed him that he would not and could not accept.

**BURCHELL v. GOWRIE AND BLOCKHOUSE COLLIERIES**, [1910] A. C. 614; 80 L. J. P. C. 41; 103 L. T. 325—P. C.

## II. AUTHORITY OF AGENT.

See also *V.*, *infra*; **SOLICITORS**, No. 1.

**4. "Mercantile Agent"—Authority to Pledge—Factors Act, 1889 (52 & 53 Vict. c. 45), ss. 1, 2.**—An agent who is entrusted with goods for sale or return on the terms that the goods are not to become his property or be mixed with his stock and that his remuneration shall consist of one half of the profits on the sale of the goods, is a mercantile agent within the Factors Act, 1889, and has, accordingly, authority to pledge the goods, though he may be at the same time carrying on an independent business as a dealer in such goods.

**Hastings, Ltd. v. Pearson** ([1893] 1 Q. B. 62) overruled.

**WEINER v. HARRIS**, [1910] 1 K. B. 285; 69 [L. J. K. B. 342; 101 L. T. 647; 26 T. L. R. 96; 54 Sol. Jo. 81; 15 Com. Cas. 39—C. A.]

**5. Innocent Misrepresentation of Authority—Authority Ceasing without Agent's Knowledge—Liability of Agent—Solicitor Retained to Defend Action—Subsequent Liability of Client—Solicitor's Liability for Plaintiff's Costs.**—The liability of the person who professes to act as agent arises (a) if he has been fraudulent; (b) if he has without fraud untruthfully represented that he had authority when he had not; and (c) also where he innocently misrepresents that he has authority where the fact is either (1) that he never had authority or (2) that his original authority has ceased by reason of facts of which he has not knowledge or means of knowledge. Such last-mentioned liability arises from the fact that by professing to act as agent he impliedly contracts that he has authority, and it is immaterial whether he knew of the defect of his authority or not.

**Smout v. Ilbery** (1842) 10 M. & W. 1 can no longer be regarded as law, if and so far as it decides that an agent continuing to act without knowledge of the revocation of his authority is not under liability to the other party for his warranty or representation of authority.

In August, 1908, the defendant, against whom the plaintiff was threatening to bring an action for libel, instructed his solicitors to act for him in the matter, and on the same day he wrote to the plaintiff referring her to his solicitors and requesting her to address any further communications to them. Pursuant to those instructions the solicitors accepted service of the writ in December, 1908, entered an appearance, delivered a defence, and took other steps in the proceedings. On April 5th, 1909, the solicitors discovered for the first time that the defendant had on October 8th, 1908, become insane and had been certified and lawfully detained as a person of unsound mind. Thereupon the plaintiff took out a summons for an order that the appearance and all subsequent proceedings in the action should be struck out and that the defendant's solicitors should pay her costs of the action. The master and the judge made an order striking out the appearance and all subsequent proceedings, but declined to make an order that the solicitors should pay the costs.

**HELD**—that the solicitors were liable for such costs upon an implied warranty or contract that they had an authority which in fact they had not.

**Smout v. Ilbery** (*supra*) doubted. **Collen v. Wright** (1857), 8 E. & B. 647 followed.

**YONGE v. TOYNBEE**, [1910] 1 K. B. 215; 79 [L. J. K. B. 208; 102 L. T. 57; 26 T. L. R. 211—C. A.]

## III. COMMISSION.

See also **AUCTIONS**, No. 2.

### (a) When payable.

**6. Sale of Property—Agent's Right to Commission—Effective Cause of Sale—Introduction of Purchaser.**—If an agent, employed to effect the sale of a property on commission, introduces a person to his principal as an intending purchaser, and the principal behind the back of the agent, and without his knowledge, sells to

### III. Commission—Continued.

the purchaser so introduced to him on terms which the agent had advised his principal not to accept, the agent's act is still the effective cause of the sale, so as to entitle him to commission.

**BURCHELL v. GOWRIE AND BLOCKHOUSE CO. (LIERIES, [1910] A. C. 614; 80 L. J. P. C. 41; 103 L. T. 325—P. C.)**

**7. Commission payable "on all Sales, Direct or Indirect"—Termination of Agreement—Right of Agent to Commission on indirect Sales after such Termination.**—The plaintiff became the agent of the defendants for the sale of lead manufactured by them upon the terms that he was to receive a commission of 2½ per cent. upon all sales, direct or indirect, effected to customers introduced by him. After the termination of the plaintiff's employment he brought an action to recover commission alleged to be due to him upon further orders given by customers originally introduced by him whilst in the defendants' service.

**HELD**—that he was not entitled to such commission.

**WEARE v. BRIMSDOWN LEAD CO., LD. 103 L. T. 429—Div. Ct.**

**8. Estate Agent—Test of Agent's Right to Commission on Sale of Property.**—In 1908, W., a firm of estate agents, was instructed by F. to sell the estate of B. In compliance therewith W. in 1903 furnished particulars of the estate to S. Owing to the price then asked, however (£38,000), no sale was effected, and matters fell into abeyance till 1906, when negotiations were resumed between S. and W., who in 1906 and 1907 again supplied S. with full information as to the property. Throughout the negotiations S. made it a point that his name should not be disclosed to the seller, and accordingly the firm did not do so. In 1907 S. inserted in a newspaper an advertisement for estates of the kind desired, to which F. (the seller) replied. S. bought the estate in December, 1907, for £31,000.

**HELD**—that W. had contributed in a material degree to the sale, and was entitled to commission.

**WALKER, FRASER AND STEELE v. FRASER'S [TRUSTEES, [1910] S. C. 222; 47 Sc. L. R. 187—Ct. of Sess.]**

#### (b) Secret Commissions, etc.

**See MASTER AND SERVANT, No. 139; STOCK EXCHANGE, No. 1.**

### IV. LIABILITY OF AGENT.

**See AUCTIONS, No. 1.**

### V. LIABILITY OF PRINCIPAL.

**9. Assignee for Creditors of Trader—Goods Ordered by Trader—Personal Liability of Assignee.**—By a deed entered into between one G., trading as G. & Co., and the defendant, G.

assigned to the defendant all his business, goodwill, and stock-in-trade, and the defendant was to carry on and manage the business, and after payment of the expenses thereby incurred and paying for goods supplied by creditors who were willing to supply goods for the purpose of the business and to look to the assets in the hands of the trustee for payment, he was to pay and divide the residue amongst the trade creditors whose names were set out in the schedule to the deed, and to pay any surplus to G. Six creditors of G. assented to the deed. No change was made in the name of the business or in the way in which it was carried on, and G., who was paid a salary, continued to manage it and to give the orders. Subsequently, the plaintiffs, who were not creditors of G. at the time the deed was executed by him, supplied goods on the orders of G. for the purpose of the business, giving credit to G. & Co. The goods not having been paid for, the plaintiffs claimed to recover the price from the defendant.

**HELD**—that the defendant was not personally liable to pay for the goods, as credit had been given to G. & Co. and not to him.

**Decision of Lord Alverstone, C.J. (101 L. T. 746; 26 T. L. R. 72) reversed.**

**G. B. NICHOLLS & CO. v. KNAPMAN, 102 L. T. 306; 26 T. L. R. 356—C. A.**

**10. Limited Authority—Holding out—Acts of Particular Class.**—If an agent be held out as having only a limited authority to do, on behalf of his principal, acts of a particular class, then the principal is not bound by an act done outside that authority, even though it be an act of that particular class, because, the authority being thus represented to be limited, the party prejudiced has notice and should ascertain whether or not the act is authorised.

**RUSO-CHINESE BANK v. LI YAU SAM, [1910] [A. C. 174; 79 L. J. P. C. 60; 101 L. T. 689; 26 T. L. R. 203; 47 Sc. L. R. 588—P. C.]**

**11. Agent Contracting in his Own Name as "Proprietor"—Admissibility of Parol Evidence to charge Undisclosed Principal.**—By a contract in writing made "between J. R., hereinafter called the proprietor," and the plaintiffs, it was agreed that the plaintiffs should build two houses for the "proprietor," that the "proprietor" should pay them the agreed price, and that all work and materials brought upon the ground should "at once become the property of the proprietor." The "proprietor" was referred to throughout the contract, which was signed by J. R. after the words "signed by the proprietor."

**HELD**—that parol evidence was not admissible to prove that this contract was made by J. R. as agent for an undisclosed principal for the purpose of charging the principal, inasmuch as such evidence would contradict the written contract.

The decision in *Humble v. Hunter* ((1848) 12 Q. B. 310) is still good law, notwithstanding the doubt expressed by Lord Russell, C.J., in *Killick v. Price* ((1895) as reported in 12 T. L. R. 263, at p. 264).



### V. Liability of Principal—Continued.

BUT HELD—that, as in this case, the objection to the admissibility of the evidence had not been properly raised in the county court where the action was tried, it could not be raised on appeal.

Decision of Div. Ct. reversed on this ground.

FORMBY BROTHERS v. E. FORMBY, [1910] W. N. [48; 102 L. T. 116; 54 Sol. Jo. 269—C. A.

12. *Limited Authority—Undisclosed Principal—Manager of Public-house—Licence in Name of Manager—Liability of Owner for Spirits ordered by Manager contrary to Instructions.*—The defendants, who were the owners of an hotel, put in a manager, whose name appeared over the premises as licensee. He was instructed to order spirits from a particular firm only, but in breach of such instructions he ordered whisky from the plaintiffs, who knew that the licence was taken out in his name and knew nothing of the defendants. Subsequently, on discovering that the defendants were the real owners of the hotel, the plaintiffs brought an action against them for the price of the whisky supplied. At the trial no evidence was given as to whether the whisky was ordered or used for the purposes of the hotel.

HELD—that judgment must be entered for the defendants on the ground that there was no evidence that the whisky had been purchased or used for the purposes of the hotel.

Decision of Div. Ct. ([1910] 2 K. B. 389; 102 L. T. 826) reversed.

KINAHAN & Co., LD. v. PARRY, 130 L. T. Jo. 126—C. A.

### VI. POWERS OF ATTORNEY.

[No paragraphs in this vol. of the Digest.]

### VII. RATIFICATION.

See INSURANCE, No. 3.

## AGREEMENT.

See CONTRACT; LANDLORD AND TENANT, ETC.

## AGRICULTURE.

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### I. AGRICULTURAL HOLDINGS.

See also SCOTTISH LAW, No. 3.

1. *Tenant under Notice to Quit—Construction of Lease—Covenants not to Commit Waste—To*

*Farm According to Approved System—Right to Plough Pasture Land.*—A yearly tenant of land, regularly tilled by him previously to his entering into agreements not to break up any "pasture lands" and "not to commit any waste or spoil," does not act in breach of his agreements by ploughing, when he is under a twelve months' notice to quit, pasture sown by him and mowed for fourteen consecutive years.

Goring v. Goring ((1676), 3 Swans. 661) followed.

An act which would not be a breach of an agreement to farm "upon the most approved system of husbandry" is not converted into such a breach by the fact that the tenant is under notice to quit.

RUSH v. LUCAS, [1910] 1 Ch. 437; 79 L. J. Ch. [172; 101 L. T. 851; 54 Sol. Jo. 200—Eve, J.

2. *Compensation for Improvements—Agreement—Construction—Artificial Manures—Feeding Stuffs—Value*—*Agricultural Holdings (Scotland) Act, 1908* (8 Edw. 7, c. 64), ss. 1 (1), 4, 5, and Sched. 1.—A schedule annexed to a lease contained terms of compensation for improvements to be substituted for the statutory schedule. The schedule was not challenged as unfair and unreasonable. It provided, on the basis of a fraction of the "cost" of the manure varying with the year of application, for certain specified artificial manures under three heads, and proceeded—"IV. Other artificial manures. Exhausted by first crop—no compensation. V. Feeding stuffs. For linseed, cotton, and rape cakes, or for other purchased substances of equal manurial value consumed on the farm by cattle and sheep and pigs during the last year of the lease, one-third of the value thereof. If consumed on permanent pasture, three-sixths of the value thereof if applied in last year, two-sixths if in second last year, and one-sixth if in third last year. Exhausted in four years." In a note appended to the schedule it was, *inter alia*, provided—"From the amount to be paid in compensation for the unexhausted manurial value of feeding stuffs the arbiters shall deduct any sum which in their opinion has been or shall be paid to the tenant on account of any increased award, by reason of the manurial value of the feeding stuffs consumed, put upon the dung left by the tenant."

HELD—(1) that the schedule falling to be read as a whole, head IV. was not void under sect. 5 of the Agricultural Holdings (Scotland) Act, 1908 [corresponding to sect. 5 of the Agricultural Holdings Act, 1908], but validly precluded the tenant from claiming compensation for artificial manures, other than those specified, which had grown a crop; (2) that "value" in head V. meant, not actual cost price, nor present cash value, nor residual manurial value, but original manurial value—*i.e.*, the value of the manurial constituents of the feeding stuffs such as nitrogen, potash, etc., before the feeding stuffs were consumed; (3) that the tenant was validly precluded from claiming compensation for feeding stuffs of the character specified in head V. which were consumed on the holding (exclusive of the permanent pasture) prior to the last year of the lease; and (4) that the



**I. Agricultural Holdings—Continued.**

tenant was entitled to compensation in respect of the consumption on the holding of feeding stuffs the manurial residuum of which entered the farm-yard manure left unapplied to the land by the tenant at outgoing, but subject always to deduction of such sum as might be found deductible under the provisions of the note appended to the schedule.

BROWN *v.* MITCHELL, [1910] S. C. 369; 47 [Sc. L. R. 216—Ct. of Sess.]

**II. CUSTOM OF THE COUNTRY.**

[No paragraphs in this vol. of the Digest.]

**III. FERTILIZERS AND FEEDING STUFFS.**

[No paragraphs in this vol. of the Digest.]

**IV. MARKET GARDENS.**

[No paragraphs in this vol. of the Digest.]

**AIR.**

*See* EASEMENTS.

**ALE AND BEER.**

*See* INTOXICATING LIQUORS.

**ALIENATION, RESTRAINTS ON.**

*See* PERPETUITIES; SETTLEMENTS; TRUSTS.

**ALIENS.****I. RIGHT TO SUE.**

[No paragraphs in this vol. of the Digest.]

**II. EXPULSION ORDER.**

[No paragraphs in this vol. of the Digest.]

**III. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**ALIMONY.**

*See* HUSBAND AND WIFE.

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*See* LANDLORD AND TENANT, No. 16; SMALL HOLDINGS AND ALLOTMENTS.

**ALLUVION.**

*See* WATERS AND WATERCOURSES.

**ALTERATION OF DOCUMENTS.**

*See* BANKERS AND BANKING; BILLS OF EXCHANGE; DEEDS AND OTHER DOCUMENTS; WILLS.

**AMUSEMENTS.**

*See* THEATRES, ETC.

**ANCIENT LIGHTS.**

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**ANIMALS.**

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*See also* CARRIERS, No. 4; COMMONS, No. 3; GAME; NEGLIGENCE; NUISANCE.

**I. CRUELTY TO ANIMALS.**

1. *Sheep—Sufficiency of Evidence—Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), s. 2.*—The respondent, who was a farmer, was summoned for cruelty to a sheep, and evidence was given by a shepherd that the sheep in question died from exhaustion through its being eaten by maggots; that it must have suffered great pain; and that he saw no signs of the wounds having been dressed. Evidence was also given that the respondent had stated that he knew that some of his sheep were affected with fly, and on one occasion he had sent a man to dress the wounds. The justices dismissed the summons on the ground that there was not sufficient evidence.

HELD—that it was open to the justices to arrive at this decision.

POTTER *v.* CHALLANS, 102 L. T. 325; 74 J. P. 114—Div. Ct.

2. *Dog Caught in Trap—Delay in Releasing Dog—Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), s. 2.*—At 9.30 a.m. on February 27th, 1910, the respondent found a dog caught in a trap set by him for the purpose of catching vermin, and went at once to a neighbouring farmer to ascertain if the dog was his.

### I. Cruelty to Animals—Continued.

Finding that it was not, he returned to his farm, fed and attended to his horses, and then went in search of the police, who released the dog at 11.30 a.m. The respondent would have run some risk of being bitten if he had attempted to release the dog with his hands. The justices found as a fact that the dog was caused a great deal of pain and suffering which could have been avoided by the respondent, and that it was within only the respondent's power to release the dog from the trap or to have had it released sooner than it was released; but in view of previous decisions they felt compelled to dismiss the complaint.

**HELD** (Channell, J., dissenting)—that the case should be sent back to the justices with an intimation that, although they were not bound to convict the respondent, there was evidence on which they could convict him if they thought fit.

*Per* Lord Alverstone, C.J.—In such cases where the act alleged against the defendant is not a direct act of commission, but the defendant has caused pain to an animal by a lawful act, and he alone can stop it, the justices are entitled to consider whether he has done his best to stop it.

*GREEN v. CROSS*, 103 L. T. 279; 74 J. P. 357; [26 T. L. R. 507—Div. Ct.]

**3. Captive Animal—Hunting—Wild Animals in Captivity Protection Act, 1900** (63 & 64 Vict. c. 33), ss. 2, 4.]—The respondent, the Master of the Cambridge University Drag Hounds, was summoned under the Wild Animals in Captivity Act, 1900, for permitting a hind to be cruelly abused. It was given in evidence that in connection with the drag hounds a number of hinds were kept, and that one of these, which was not in a mutilated or injured state, had been released and was being hunted; that three times during the hunt it took refuge in a yard, from which it was dislodged by being prodded and whipped; that once when being so driven out of the yard it ran against some barbed wire, and was injured thereby; that when caught in the yard it was dragged along the road for some distance till it fell down exhausted; that it was again dragged along for some fifteen or sixteen yards, when it fell down and died. At the close of the evidence for the prosecution it was submitted on behalf of the respondent that he had no case to answer, as all the acts deposed to took place while the hind was being hunted, and by sect. 4 of the Wild Animals in Captivity Act, 1900, it was provided that that Act did not apply to anything done in the hunting of an animal. The justices upheld this contention, and accordingly dismissed the information.

**HELD**—that the justices should have considered that there was a case requiring explanation as to how the acts done at the last stage of the proceedings could be hunting, and that the case should therefore be remitted to the justices for further hearing.

*RODGERS v. PICKERSGILL*, 103 L. T. 33; 74 [J. P. 324; 26 T. L. R. 493; 54 Sol. Jo. 564—Div. Ct.]

**4. Ill-treating, Abusing, and Torturing—Separate Offences—Form of Information—Summary Jurisdiction Act, 1848** (11 & 12 Vict. c. 43), s. 10—*Cruelty to Animals Act, 1849* (12 & 13 Vict. c. 92), s. 2.]—Sect. 2 of the Cruelty to Animals Act, 1849, provides that "if any person shall . . . cruelly beat, ill-treat, abuse or torture . . . any animal" he shall be liable to a penalty.

An information was preferred against the respondent under the Cruelty to Animals Act, 1849, s. 2, for cruelly ill-treating, abusing, and torturing a grey gelding. The justices were of opinion that as the word "and" connected the words "abuse" and "torture" in the information, it was an information for three offences, and they put the appellant to his election on which of the charges he would proceed. The appellant declined to elect, and the justices thereupon dismissed the information.

**HELD**—that the words "abuse" and "torture" created separate offences and that the justices were, in the circumstances, right in refusing to convict, as sect. 10 of the Summary Jurisdiction Act, 1848, requires that every information shall be for one offence only.

*JOHNSON v. NEEDHAM*, [1909] 1 K. B. 626; 78 [L. J. K. B. 412; 100 L. T. 493; 73 J. P. 117; 25 T. L. R. 245; 22 Cox, C. C. 63—Div. Ct.]

## II. DISEASES OF ANIMALS.

**5. "Suspected of" Sheep Scab—Suspicion of Persons other than the Owner—Diseases of Animals Act, 1894** (57 & 58 Vict. c. 57), ss. 22, 52—*Sheep Scab Order, 1905*, s. 1, sub-s. 1.]—The Sheep Scab Order of the Board of Agriculture and Fisheries, 1905, sect. 1, sub-sect. 1, enacts—"Every person having or having had in his possession or under his charge a sheep affected with, or suspected of, sheep scab," shall give notice of the fact as therein provided.

**HELD**—that the words "suspected of" do not mean that the party in possession must suspect, nor that it is sufficient if anyone whatsoever suspects to the knowledge of the party in possession; but that they mean that there is a reasonable suspicion known to the party in possession, the reasonableness of the suspicion depending on the facts and circumstances of each case, and particularly on the expert knowledge and experience, or their absence, of a party raising the suspicion, and the comparative knowledge of the party in possession.

*MACLEAN v. LAIDLAW*, 46 Sc. L. R. 877; 6 [Adam, 93—Ct. of Justy.]

**6. Sheep—Carried at Owner's Risk—Condition Excluding all Liability—Overcrowding—Breach of Statutory Duty—Wilful Misconduct—Board of Trade Regulations—Object of Statute—Diseases of Animals Act, 1894** (57 & 58 Vict. c. 57).]—A steamship company contracted to carry a number of sheep under conditions excluding liability for any act, neglect, or mistake in judgment of themselves or their servants. On the voyage the sheep were seriously overcrowded, in breach of Board of Trade regulations, and several were killed.

## II. Diseases of Animals—Continued.

HELD—that the owners could not recover for the loss because (a) even if wilful misconduct did not fall within the condition, no such misconduct had been proved, and (b) the Board of Trade regulations were directed only to preventing the spread of disease, or perhaps to preventing cruelty to the sheep, and neither they, nor the statute upon which they were founded, could be construed as giving the owner any right to recover damages for his loss, as that was no part of their policy.

*Gorris v. Scott* ((1874) L. R. 9 Exch. 125) followed.

*M'ALLISTER v. AYR STEAM SHIPPING CO., LD.*  
[44 I. L. T. 106—Cherry, L.J., Ireland.

## III. DOGS.

**7. Dangerous Dog—Order for Destruction—Removal of Dog out of Jurisdiction—Power of Justices to make Order—Dogs Act, 1871 (34 & 35 Vict. c. 56), s. 2.]**—On March 20th, 1908, the appellant's dog, which had previously bitten several people, bit the respondent's daughter. After March 20th, and before the date of an information preferred against the appellant under sect. 2 of the Dogs Act, 1871, the appellant sent the dog out of the jurisdiction of the police court, and it continued outside that jurisdiction at the time of the hearing of the information. The justices found that the appellant was the owner of the dog at the time of the offence, and that there had been no *bonâ fide* disposal of it, and they made an order adjudging that the dog should be destroyed.

HELD—that the fact that a dangerous dog has been sent out of the jurisdiction of the particular Court before the information is preferred, or heard, does not prevent the justices making an order, provided there has not been a *bonâ fide* disposal of the dog.

*LOCKETT v. WITHEY*, 99 L. T. 838; 72 J. P. [492; 25 T. L. R. 16; 21 Cox, C. C. 748—Div. Ct.

**8. Licence—Exemption—Used Solely for Tending Sheep or Cattle—Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), s. 22 (2)—Dogs Act, 1906 (6 Edw. 7, c. 32), s. 5.]**—The respondent was the owner of a dog for which he had no licence, but had duly obtained an exemption as for a dog used solely for tending sheep or cattle, in pursuance of sect. 22, sub-sect. 2, of the Customs and Inland Revenue Act, 1878, and of sect. 5 of the Dogs Act, 1906. A police constable saw the respondent cutting corn with a reaping machine in a harvest field on his farm, and the dog was in the field chasing and catching rabbits that ran from the standing corn as it was being cut. Labourers and others in the presence of the respondent urged the dog on to catch the rabbits.

The respondent was summoned for keeping a dog without a licence, and the justices, having found that the respondent did not himself urge the dog on, dismissed the information.

HELD—that as the respondent was not using

the dog for catching rabbits he had not committed any breach of the terms of the exemption, and that therefore the justices were right.

*EGAN v. FLOYDE*, 102 L. T. 745; 74 J. P. 223; [26 T. L. R. 401; 8 L. G. R. 495—Div. Ct.

## IV. LIABILITY FOR INJURY BY.

**9. Savage Horse—Liability of Owner for Injury to Person Crossing Field—Field Habitually Used by Public as a Short Cut—Knowledge of Owner.]**—The appellant, while passing through a field belonging to the respondent, was attacked and injured by a horse belonging to the respondent. The respondent knew that the field was habitually used by the public as a short cut, and that the horse which he had put there was ferocious. In an action by the appellant to recover damages from the respondent in respect of his injuries:

HELD—that the respondent owed a duty to the public crossing the field to give notice of probable danger from the horse, and that as he had failed to give such notice he was liable for the injuries caused to the appellant.

Decision of C. A. ([1910] 1 K. B. 173; 79 L. J. K. B. 297; 101 L. T. 873; 26 T. L. R. 108; 54 Sol. Jo. 99) reversed.

*LOWERY v. WALKER* [1910] W. N. 241; 27 [T. L. R. 83; 55 Sol. Jo. 62—H. L.

**10. Distress Damage Feasant—Impounding—Pound more than Three Miles from Place of Seizure—1 & 2 Ph. & Mary, c. 12, s. 1.]**—Under the provisions of the statute 1 & 2 Ph. & Mary, c. 12, animals taking damage feasant may be driven to a pound anywhere within the hundred, rape, wapentake, or lathe, however far the pound may be from the place where they were taken; or they may be driven to a pound outside the hundred, rape, wapentake, or lathe, provided it is not more than three miles from the place where they were taken.

*COAKER v. WILLCOCKS*, 27 T. L. R. 137; 55 [Sol. Jo. 155—Div. Ct.

See S. C. under COMMONS.

## V. WILD BIRDS PROTECTION.

**11. Larks—Possession in London of Larks Lawfully Caught Elsewhere—Wild Birds Protection (Administrative County of London) Order, 1909, Art. 4—Wild Birds Protection Acts, 1880 (43 & 44 Vict. c. 35), ss. 3, 8; and 1881 (44 & 45 Vict. c. 51), ss. 1, 2.]**—It is an offence under the Wild Birds Protection (Administrative County of London) Order, 1909, for a person to have in his possession in London live larks recently taken, notwithstanding that they were caught in a county where they could lawfully be taken.

*FLOWER v. WATTS*, [1910] 2 K. B. 327; 79 L. J. [K. B. 751; 103 L. T. 39; 74 J. P. 302; 26 T. L. R. 495; 8 L. G. R. 809—Div. Ct.

**ANNUITIES.**

See DEATH DUTIES; EXECUTORS, No. 19; INCOME-TAX; RENT-CHARGES AND ANNUITIES; REVENUE; SETTLEMENTS, No. 5; TRUSTS; WILLS, Nos. 49, 50.

**ANTICIPATION, RESTRAINT ON.**

See HUSBAND AND WIFE; PERPETUITIES; PERSONAL PROPERTY; TRUSTS.

**APOTHECARIES.**

See MEDICINE AND PHARMACY.

**APPEAL.**

See BANKRUPTCY; COUNTY COURTS; COURTS; CRIMINAL LAW AND PROCEDURE; DEPENDENCIES AND COLONIES; MAGISTRATES; PRACTICE AND PROCEDURE, ETC.

**APPOINTMENT, POWERS OF.**

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See LANDLORD AND TENANT; REAL PROPERTY AND CHATTELS REAL; RENT-CHARGES AND ANNUITIES; SETTLEMENTS; TRUSTS; WILLS.

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See VALUERS AND APPRAISERS.

**APPRENTICES.**

See INFANTS; MASTER AND SERVANT.

**APPROPRIATION OF PAYMENT.**

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**ARBITRATION.**

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**I. ARBITRATORS AND UMPIRES.**

1. *Jurisdiction—Points of Claim and Defence delivered—New Ground of Defence put forward—Jurisdiction of Arbitrator to allow Amendment.*—Matters of difference having arisen between the insured and the insurance company under a policy of insurance, the parties agreed to refer all matters of difference under the policy to the award of an arbitrator. The arbitrator directed points of claim and of defence to be delivered, and these were delivered accordingly. Upon the matter coming before the arbitrator, the insurance company at once intimated that they desired to amend their points of defence by adding thereto a new ground of defence to the claim based upon a condition in the policy, and they contended that the arbitrator was bound to allow this new ground of defence to be added, and had no discretion to refuse to allow it.

**HELD**—that the points of claim and defence, being in the nature of pleadings, could be amended by the arbitrator at his discretion; and that after the parties had submitted their points of claim and defence the arbitrator was not bound to admit any new ground of defence, but had a discretion, to be exercised judicially, either to allow or to refuse to allow the new ground of defence to be added.

*Edward Lloyd, Ltd. v. Sturgeon Falls Pulp Co., Ltd.* (1901) 85 L. T. 162 followed.

**IN RE ARBITRATION BETWEEN CRIGHTON AND [LAW CAR AND GENERAL INSURANCE CORPORATION, LD., 1910]** 2 K. B. 738; 80 L. J. K. B. 49; 103 L. T. 62—Div. Ct.

2. *Misconduct of Arbitrator—Removal from Office—Rules of Evidence—Witness called by Arbitrator against Will of either of the Parties to the Arbitration—Arbitration Act, 1889* (52 & 53 Vict. c. 49), s. 11.—An umpire or a single arbitrator occupies a judicial position and has no power himself to call witnesses to fact against the will of either of the parties to the arbitration;



**I. Arbitrators and Umpires—Continued.**

and in so doing he is guilty of legal misconduct which may justify his removal from his office under sect. 11 of the Arbitration Act, 1889. Arbitrators are bound by the same rules of evidence as Courts of law.

Dictum of Lord Esher, M.R. in *Coulson v. Disborough* ([1891] 2 Q. B. 316, at p. 318) disapproved.

Decision of Div. Ct. reversed.

IN RE ENOCH AND ZARETZKY, BOCK & Co.'s  
[ARBITRATION, [1910] 1 K. B. 327; 79 L. J. K. B. 363; 101 L. T. 801—C. A.]

**3. Misconduct of Arbitrator—Inspecting Subject of Valuation accompanied by One Party Only—Award Set Aside.**—In an arbitration as to the value of a farm each of two arbitrators was requested, with the assent of both parties, to make a separate valuation on behalf of the party who had nominated him. One of the arbitrators inspected the farm once only, in the company of the party who had nominated him, and in the absence of the other party. Subsequently the arbitrators compared their valuations, and without calling further evidence made their award.

HELD—that the award must be set aside on the ground of misconduct of the arbitrator who had inspected the farm accompanied by one party only.

IN RE ARBITRATION BETWEEN BRIEN AND [BRIEN, [1910] 2 I. R. 84—Div. Ct., Ireland]

**II. AWARD.**

[No paragraphs in this vol. of the Digest.]

**III. COSTS.**

[No paragraphs in this vol. of the Digest.]

**IV. SPECIAL CASE.**

[No paragraphs in this vol. of the Digest.]

**V. SUBMISSION TO ARBITRATION.****(a) Effect of.**

[No paragraphs in this vol. of the Digest.]

**(b) Stay of Proceedings.**

See also SHIPPING, Nos. 14, 27.

**4. Provident Society—Dispute between Member and Society—Powers of Society in Dispute—Proceedings Stayed—Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 49.**—An application by motion to stay proceedings in an action on the ground that the matters in dispute had been agreed to be referred to arbitration by reason of sect. 49 of the Industrial and Provident Societies Act, 1893, and of the rules of the society:—

HELD—that it was no answer to the application to say that the matter in dispute was whether certain acts were *ultra vires* the society or not, and that proceedings must be stayed accordingly.

*Stann v. Liverpool Marine Society* ((1891) 63 L. J. Q. B. 471) applied.

COX v. HUTCHINSON, [1910] 1 Ch. 513; 79 L. J. [Ch. 259; 102 L. T. 213; 26 T. L. R. 263; 54 Sol. Jo. 271—Warrington, J.]

**5. Partnership — Dissolution — Arbitration Clause—Mortgages of Partner's Share—Action for Account—Discretion of Court as to Stay—Questions of Law—Bias of Arbitrators Appointed—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 31—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.**—A partnership deed contained a clause providing for arbitration in the case of any difference arising at any time between the partners or "between one or more of them and the executors or administrators of the others or other of them or between their respective executors." The partnership having been dissolved as regards one partner who had previously mortgaged his share and interest in the partnership, the mortgagees of that partner's share brought an action for an account of his share against all the partners. The continuing partners and the outgoing partner had respectively appointed their accountants as arbitrators in accordance with the arbitration clause. On a motion by the continuing partners to stay proceedings in the action under sect. 4 of the Arbitration Act, 1889:—

HELD—that the mortgagees had under sect. 31 of the Partnership Act, 1890, a statutory right, independent of the partnership deed, to an account of the partner's share from the date of dissolution; that the arbitration clause in the partnership deed, which did not in terms provide for persons claiming through or under the partners was not binding on the mortgagees; that the mortgagees were not parties to the arbitration and would not be bound by any account taken in it; and therefore that the action ought not to be stayed.

HELD ALSO—that the Court having a discretion under sect. 4 of the Arbitration Act, 1889, may refuse to stay proceedings where the principal points in dispute are matters of law and where the arbitrators appointed are mere advocates of the parties and it is not probable that they would exercise an independent judgment on the matters in question.

BONNIN v. NEAME, [1910] 1 Ch. 732; 79 L. J. [Ch. 388; 102 L. T. 708—Eady, J.]

**(c) Revocation.**

[No paragraphs in this vol. of the Digest.]

**ARCHITECT.**

See BUILDERS, ENGINEERS AND ARCHITECTS; WORK AND LABOUR.

**ARMORIAL BEARINGS.**

See REVENUE; WILLS.

**ARMY.**

See ROYAL FORCES.



## ARRANGEMENT WITH CREDITORS.

*See* BANKRUPTCY AND INSOLVENCY.

## ARTICLED CLERK.

*See* SOLICITOR.

## ARTICLES OF ASSOCIATION.

*See* COMPANIES.

## ARTIZANS' DWELLINGS.

*See* PUBLIC HEALTH.

## ASSAY.

*See* REVENUE, No. 4.

## ASSESSMENT.

*See* RATES AND RATING.

## ASSIGNMENT FOR BENEFIT OF CREDITORS.

*See* BANKRUPTCY AND INSOLVENCY.

## ASSIGNMENT OF DEBT.

*See* CHOSSES IN ACTION.

## ASSOCIATIONS.

*See* BUILDING SOCIETIES; CLUBS; COMPANIES; FRIENDLY SOCIETIES; INDUSTRIAL SOCIETIES; TRADE AND TRADE UNIONS.

## ASYLUMS.

*See* CHARITIES; LOCAL GOVERNMENT; LUNATICS; POOR LAW; PUBLIC HEALTH.

## ATTACHMENT OF DEBTS.

*See* BANKRUPTCY, No. 29; COUNTY COURTS; EXECUTION; PRACTICE, XIV.

## ATTACHMENT OF PERSON.

*See* COMPANIES; CONTEMPT AND ATTACHMENT.

## ATTORNEY.

*See* SOLICITORS. FOR POWER OF ATTORNEY, *see* AGENCY.

## AUCTIONS AND AUCTIONEERS.

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*See also* AGENCY; SALE OF GOODS; TROVER AND CONVERSION.

### I. AUCTIONS.

[No paragraphs in this vol. of the Digest.]

### II. AUCTIONEERS.

#### (a) Liability.

1. *Bogus Bids—Specific Performance—Consent—Subsequent Action of Deceit—Estoppel—Damages—Costs of Prior Action.*—An auctioneer misrepresented to a purchaser certain bogus bids as genuine, whereby the purchaser was induced to give an inflated price for a farm. Shortly after the sale the purchaser suspected the fraud and refused to complete, whereupon the vendor sued him for specific performance. The purchaser, having no proof of the fraud, entered into a consent settling the action by which the price of the farm was reduced by £55, and each party bore his own costs of the action. The purchaser subsequently repudiated the consent on another ground, but took no further step in regard to the farm. He then sued the auctioneer in deceit, and the auctioneer admitted the fraudulent bids.

**Held**—(1) that, as the auctioneer was no party to the former action, the consent furnished no defence as regards him, and the plaintiff could prove damage not in fact compensated under the consent; (2) and that the costs of the action for specific performance were recoverable against the defendant in this action as damages caused by the defendant's fraud.

INGRAM v. GILLEN, 44 I. L. T. 103—Cherry. [L.J., Ireland.

## II. Auctioneers—Continued.

## (b) Generally.

2. *Commission Abusive Sale—Return of Deposit.*—The plaintiff agreed with the defendants that the latter should sell for him at auction at the Mart a freehold property at Peckham. The property was knocked down to a purchaser, who signed the contract and paid the auctioneers a deposit of £200. The sale went off, and, the plaintiff having paid to the purchaser's solicitors the amount of the deposit, claimed the £200 in full from the defendants.

**HELD**—that there had been such a sale of the property as entitled the auctioneers to retain their commission out of the deposit paid by the purchaser to them.

*Peacock v. Freeman* ((1888) 4 T. L. R. 541) discussed and not followed.

Decision of Sutton, J., reversed.

*SKINNER v. ANDREWS AND HALL*, 26 T. L. R. [340; 54 Sol. Jo. 360—C. A.]

**AUDITORS.**

See COMPANIES, No. 3; TRUSTS, No. 4.

**AUSTRALIA.**

See DEPENDENCIES AND COLONIES.

**AVERAGE.**

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**BAIL.**

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See also CARRIERS; CRIMINAL LAW; INNKEEPERS; PAWNBROKERS, ETC.

**I. HIRE PURCHASE AGREEMENTS.**

See BILLS OF SALE, No. 1; DISTRESS, Nos. 2, 4.

**II. LIABILITY OF BAILEE.**

[No paragraphs in this vol. of the Digest.]

**III. LIABILITY OF BAILOR.**

[No paragraphs in this vol. of the Digest.]

**IV. GENERALLY.**

1. *Warehouseman—Lien—Delivery Order—All Charges to Account of Holder of Delivery Order—Goods Delivered Without Payment of Charges—Lien for Unsatisfied Charges.*—The plaintiffs, who were bankers, financed B., the selling agent of an Argentine freezing company, the plaintiffs receiving as their security the bills of lading for the cargoes of meat consigned to this country. With the consent of the plaintiffs, B. arranged that the meat when it arrived should be warehoused in the defendants' cold stores pending its sale. The practice was for the plaintiffs, when they lodged the bills of lading with the defendants, to do so by a letter containing the words: "Please be good enough to hold to our order acknowledging receipt to us as usual"; and when parcels of meat were to be released, the plaintiffs wrote to the defendants: "Please deliver to B. or order" so much meat, "all charges to his account." The defendants gave delivery to B. of certain parcels of meat under those delivery orders without requiring him to pay the rent and charges due thereon.

**HELD**—that the defendants were not entitled to enforce as against the plaintiffs their general lien on the balance of the meat remaining in their stores for the unsatisfied charges due in respect of the parcels of meat which had been delivered to B.

*HILL AND SONS v. LONDON CENTRAL MARKETS* [COLD STORAGE CO., LD., 102 L. T. 715; 26 T. L. R. 397; 15 Com. Cas. 221—Hamilton, J.]

**BAKEHOUSES.**

See FACTORIES AND WORKSHOPS; LANDLORD AND TENANT.

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See ELECTIONS.

## BANKERS AND BANKING.

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See also **BILLS OF EXCHANGE; DEPENDENCIES, No. 10; GUARANTEE, Nos. 1, 2; MISTAKE, No. 1; MONEY AND MONEY-LENDERS.**

## I. APPROPRIATION OF PAYMENTS.

**1. Mortgage to Bank to Secure Overdraft—Notice of Subsequent Mortgage—Further Advances—Priority—Rule in Clayton's Case—Evidence—Intention.**—The rule in *Clayton's Case*, that for the purpose of ascertaining the manner in which money received by a creditor on behalf of a debtor has been appropriated the entries in a current account kept by the creditor and communicated to the debtor are admissible as evidence to show that the earliest item of credit is appropriated towards discharging the earliest item of debit, is a rule of evidence and not a rule of law, and evidence may be produced to show that this was not the intention of the parties.

Where the customer of a bank has not directed any appropriation of money paid in, the election is with the bank, and entries in the pass-book communicated to the customer are as against the bank, in the absence of evidence to the contrary, *prima facie* evidence that the bank has appropriated the various sums according to the priority in order of the entries on the one side and on the other side of the account.

**HELD**—that in this case there was sufficient evidence of the intention of the parties to rebut the presumption arising from the application of the rule in *Clayton's Case*.

*Clayton's Case* ((1816) 1 Mer. 572, 605) and *Hopkinson v. Rolt* ((1861) 9 H. L. Cas. 514) considered.

Decision of Eve, J. (53 Sol. Jo. 399) affirmed (Cozens-Hardy, M.R., dissenting).

**DEELEY v. LLOYDS BANK**, [1910] 1 Ch. 648; [79 L. J. Ch. 561; 102 L. T. 556—C. A.]

**2. Army Officer's Pension—Garnishee Order—Receipt for Paymaster-General—Negotiable Instrument—Army Act, 1881 (44 & 45 Vict. c. 58), s. 141.**—An army officer kept a separate account at his bank for his pension or retired pay. On January 1st, 1909, there was a balance of £6 13s. 8d. in this account, which had previously been received by the officer as pension money. On the same date he sent to his bank a document which on the face of it was a receipt for £17 12s. 6d., paid by the Paymaster-General to the officer on that date. This document, which was signed by the officer, had the following note at the foot of the sheet:—"This receipt must be presented for payment by a London banker, but may be negotiated in the country or abroad, and is to be left by the banker at the

Paymaster-General's office one day for examination." The bank credited the officer with the £17 12s. 6d. on January 1st, but only collected this sum from the Paymaster-General on January 7th. On January 1st a garnishee order was served on the bank by a judgment creditor of the officer for a larger sum than £6 13s. 8d.

**HELD**—that the £6 13s. 8d., having been paid over by the Paymaster-General, had lost its character of pension, and was subject to the garnishee order, notwithstanding sect. 141 of the Army Act, 1881.

**HELD ALSO**—that the document was not a negotiable instrument, and that the £17 12s. 6d. was not subject to the garnishee order.

**JONES & CO. v. COVENTRY**, [1909] 2 K. B. [1029; 79 L. J. K. B. 41; 101 L. T. 281; 25 T. L. R. 736; 53 Sol. Jo. 734—Div. Ct.]

## II. CHEQUES.

**3. Conditional Payment—Interest on Debentures.**—The mere giving of a cheque in respect of interest due on a debenture is not a conditional payment so as to release the security and prevent the debenture-holder claiming, on the non-payment of the cheque, to rank as a secured creditor.

**IN RE DEFRIES AND SONS, LD., EICHHOLZ v. THE COMPANY**, [1909] 2 Ch. 423; 78 L. J. Ch. 720; 101 L. T. 486; 25 T. L. R. 752; 53 Sol. Jo. 697; 16 Manson, 308—Warrington, J.]

**4. Unconditional Order to Pay—Dividend Warrant—Special Indorsement Required after Three Months—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 3, 73.**

*Seem*, a statement on a dividend warrant that "it will not be honoured after three months from date of issue unless specially endorsed for payment by the secretary" does not make it a conditional order to pay, and therefore not a cheque within the meaning of sects. 3 and 73 of the Bills of Exchange Act, 1882.

**THAIRLWALL v. GREAT NORTHERN RY. CO.**, [1910] 2 K. B. 509; 79 L. J. K. B. 924; 103 L. T. 186; 26 T. L. R. 555; 54 Sol. Jo. 652; 17 Manson, 247—Div. Ct.]

## III. IN GENERAL.

**5. Garnishee Order Nisi—Order Inaccurate—Right of Bank to Refuse to Act on Order.**—Unless a garnishee order nisi correctly designates the judgment debtor and the account which he has with a bank, the bank on which the order is served need not retain the money of the customer which the order is intended to attach.

Decision of Lawrence, J., reversed.

**KOCH v. MINERAL ORE SYNDICATE, LONDON [AND SOUTH WESTERN BANK, LD., GARNISHEES]**, 54 Sol. Jo. 600—C. A.]

**6. Bankers' Books—Power of Magistrate to Make Order for Inspection—Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), ss. 7, 10.**—A magistrate has power to make an order for the inspection of a banker's book

III. In General—Continued.

under sect. 7 of the Bankers' Books Evidence Act, 1879.

*R. v. Bradlaugh* ((1883) 15 Cox. C. C. 222 n.—dictum of Coleridge, J.) not followed.

*R. v. KINGHORN AND ANOTHER. EX PARTE DUNNING*, [1908] 2 K. B. 949; 78 L. J. K. B. 33; 99 L. T. 794; 72 J. P. 478; 21 Cox, C. C. 727—Div. Ct.

7. *Representation as to Credit of Customer—Extent of Duty of Banker.*] It is no part of the duty of a banker, when asked for information as to the financial standing of a customer, to make inquiries outside as to the solvency or otherwise of such customer; he is not bound to do more than answer honestly the question he is asked from what he knows from the books and accounts before him.

*PARSONS v. BARCLAY & CO. AND ANOTHER.* [103 L. T. 196; 26 T. L. R. 628—C. A.]

8. *Banker and Customer—Detention of Securities Deposited for Safe Custody—Acting under Pressure of a Jus tertii—Law of Massachusetts—"Trustee-Process."*]—It is no answer to a demand by a customer of a bank for delivery of property deposited by him with the bankers for safe custody that the bankers have been served with a writ in proceedings by way of execution authorised by the law of the State of Massachusetts and known as "trustee-process." Trustee-process is not a proceeding *in rem*, and does not operate so as to attach any property in the hands of the party on whom the writ is served. It operates only as a warning to the alleged trustee that, should judgment be recovered against the person who entrusted the property to him, he can be made personally liable to answer the judgment (to the extent of the property so entrusted to him) should he thereafter be adjudged a trustee in this sense. This potential liability does not justify the party "trustee'd" in withholding the property from the person who entrusted it to him, even though by parting with it to the latter he will deprive himself of any fund out of which to indemnify himself, and be left, at most, with a personal right to be indemnified.

*WARREN v. BARING BROS. & CO., LD.*, 54 [Sol. Jo. 720—Warrington, J.]

IV. BANK OF ENGLAND.

[No paragraphs in this vol. of the Digest.]

BANKRUPTCY AND  
INSOLVENCY.

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<i>See also</i> BILLS OF SALE, No. 2; CRIMINAL LAW, Nos. 62, 65; DEPENDENCIES, No. 27; GUARANTEE, No. 3; MISREPRESENTATION, No. 1; MISTAKE: MONEY AND MONEY - LENDERS; MORTGAGE.	
I. MISCELLANEOUS.	
1. <i>Action Commenced by Plaintiff on Behalf of Himself and as Liquidator of a Company—Subsequent Bankruptcy of Plaintiff—Effect of Bankruptcy on Maintenance of Action.</i> ]—B. commenced an action on behalf of himself and as liquidator of a company, to have certain orders set aside on the ground of fraud. Subsequently B. was adjudicated a bankrupt, and the official receiver, his trustee in bankruptcy, declined to proceed with the action. Consequently, on the defendants' application, the Master made an order dismissing the action. On appeal to the judge, the Master's order was affirmed.	
HELD—that B. could not continue the action as liquidator of the company, and that the order appealed from must be affirmed; and that if the validity of the petitioning creditor's judgment which the plaintiff alleged had been obtained against him by fraud was to be contested, it was a matter to be dealt with in the Bankruptcy Court, as the right to continue the action was a	

## I. Miscellaneous—Continued.

chose in action, which was vested in the trustee, and therefore the bankrupt had no *locus standi*.

**BOALER v. POWER AND OTHERS**, [1910] 2 K. B. 229; 79 L. J. K. B. 486; 102 L. T. 450; 26 T. L. R. 358; 54 Sol. Jo. 360; 17 Manson. 125—C. A.

## II. ACT OF BANKRUPTCY.

[No paragraphs in this vol. of the Digest.]

## III. ADMINISTRATION OF BANKRUPT PROPERTY.

[No paragraphs in this vol. of the Digest.]

## IV. ANNULMENT OF PROCEEDINGS.

[No paragraphs in this vol. of the Digest.]

## V. BANKRUPTCY NOTICE.

See also No. 38, *infra*.

**2. Bankruptcy of Judgment Creditor—Leave to Trustee to Issue Execution—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), ss. 1, 4—R. S. C., Ord. 17, r. 4; Ord. 42, r. 23.**—Where a judgment creditor has become bankrupt the trustee in his bankruptcy can issue a bankruptcy founded on the judgment, provided that he obtain leave to issue execution thereon, under Ord. 42, r. 23, and need not be made a party to the action in which the judgment was obtained under Ord. 17, r. 4.

**IN RE BAGLEY**, [1910] W. N. 224; 103 L. T. 470; 55 Sol. Jo. 48—C. A.

**3. Final Judgment—Judgment Set Aside in Part—R. S. C., Ord. 27, r. 15—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4 (1) (g).**—Judgment for £746 was given against the debtor in default of appearance. On application to set the judgment aside, the Master ordered the judgment to stand good for £150, and gave leave to defend as to the balance.

**HELD**—that the creditor was entitled to issue a bankruptcy notice for the sum of £150 as due under a final judgment for £746, reduced by the Master's order to judgment for £150.

**IN RE MOSENTHAL, EX PARTE MARX**, 54 [Sol. Jo. 751—C. A.

## VI. COUNTY COURTS.

See also No. 11, *infra*.

**4. Committal Order—Evidence of Means—Receipt of Large Sum by Defendant.**—In order to get a committal order against a debtor the plaintiff must prove that he has means to pay at the date of the instalment order, and the fact that six months previously he received a large sum of money is not of itself sufficient proof of means.

**CURRY v. McELVANNA**, 44 I. L. T. 108—[Cherry, L.J., Ireland.

## VII. DEED OF ARRANGEMENT.]

**5. Liquidation by Arrangement—Liquidation Closed by Statute—Vesting of Property in Official Receiver—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71)—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 160—Bankruptcy (Discharge and**

**Closure) Act, 1887 (50 & 51 Vict. c. 66), s. 3 (1).**—Sect. 3 (1) of the Bankruptcy (Discharge and Closure) Act, 1887, does not apply to a liquidation by arrangement under the Bankruptcy Act, 1869, so as to close a liquidation resolved on in 1879, and, where the debtor died in 1890, and a sum became payable in 1908 by trustees of a will to the estate of the deceased debtor, a surviving trustee in the liquidation must go on with interpleader proceedings instituted to determine who is entitled to the sum payable under the will.

**Decision of Div. Ct.** ([1909] W. N. 39) reversed.

**IN RE BARTON, TOMLINS v. LATIMER**, [1909] 2 K. B. 841; 79 L. J. K. B. 29; 101 L. T. 407; 16 Manson, 269—C. A.

**6. Registration—Validity—Affidavit Sworn before Solicitor of Trustee—Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), ss. 5, 6—Commissioners for Oaths Act, 1889 (52 Vict. c. 10), s. 1—R. S. C. Ord. 38, r. 16.**—The affidavit by the debtor required by sect. 6 of the Deeds of Arrangement Act, 1887, to be filed with the copy of the deed of arrangement when registered, if sworn before a commissioner for oaths who is the solicitor of the trustee under the deed, is void under sect. 1 (3) of the Commissioners for Oaths Act, 1889, and Ord. 38, r. 16, and therefore the deed of arrangement when registered is a nullity.

**Baker v. Ambrose** ([1896] 2 Q. B. 372) applied.

**IN RE BAGLEY**, [1910] W. N. 224; 103 L. T. 470; 55 Sol. Jo. 48—C. A.

**7. Proof by Creditor—Proof by Surety for Deficiency—Double Proof—Interest.**—Under a deed of arrangement containing the usual provisions a surety is not entitled to prove for the balance remaining due after the creditor has proved and received a dividend in respect of the debt, but he is entitled to prove for interest on such balance.

**IN RE PYKE, DAVIS v. JEFFREYS**, 55 Sol. Jo. [109—Eve, J.

**8. Practice—Registration—Impossibility of Making Required Affidavit—Delay—Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), ss. 6, 9.**—An arranging debtor became mentally incapable of swearing the affidavit leading to registration of a deed of arrangement. The statutory period for registering such deed was also exceeded. An order was made dispensing with the affidavit, and extending the time for registration of the deed.

**IN RE X., AN ARRANGING DEBTOR**, 44 I. L. T. [167—Palles, L.C.B., Ireland.

## VIII. DISCHARGE.

**9. Second Bankruptcy—Suspension of Discharge Under First Bankruptcy—Unexpired Period of Suspension.**—A person who has been adjudicated bankrupt on two occasions is not precluded from applying for his discharge under the second bankruptcy by the fact that the period for which



## VIII. Discharge—Continued.

his discharge under the first bankruptcy was suspended is still unexpired.

IN RE J. R. DAVIES, 26 T. L. R. 457—Giffard, [Registrar.

## IX. DIVIDENDS.

[No paragraphs in this vol. of the Digest.]

## X. FRAUDULENT PREFERENCE.

[No paragraphs in this vol. of the Digest.]

## XI. INTERIM RECEIVER.

[No paragraphs in this vol. of the Digest.]

## XII. OFFENCES.

[No paragraphs in this vol. of the Digest.]

## XIII. PETITION.

See also No. 21, *infra*.

10. *Petition Dismissed—Payment of Costs by Debtor—Jurisdiction—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 105—*Bankruptcy Rules, 1886 to 1890, r. 183* (1).—A. obtained judgment in an action against B. under Order 14, served him with a bankruptcy notice, and filed a bankruptcy petition against him. B. appealed against the judgment under Order 14, and eventually the Court of Appeal set aside the judgment, and gave him unconditional leave to defend on paying a sum into Court, which he did. When the bankruptcy petition came before the registrar, there being then no debt due to the petitioner in consequence of the decision of the Court of Appeal, the registrar dismissed the petition, but ordered B. to pay some of the costs.

HELD—that no receiving order having been made, the case was within r. 183 (1) of the Bankruptcy Rules, 1886 to 1890, and there was no jurisdiction to order B. to pay any costs.

IN RE A DEBTOR (No. 1103 of 1909). [1910] 1 K. B. 313; 79 L. J. K. B. 263; 101 L. T. 841; 54 Sol. Jo. 217; 17 Minson, 6—C. A.

11. *Petition by Several Creditors—Payment of one Creditor—Joinder of New Creditors—Discontinuance of Petition pending Appeal by Debtor—Right to Present Second Petition—Neglect by Creditors to Appear on First Petition—Bankruptcy Rules, 1886 and 1890, r. 163.*—Where creditors, being advised that they will not succeed on their petition, give notice of discontinuance of proceedings, and consent to the dismissal of their petition, they do not “neglect to appear” on the petition within the meaning of r. 163, and need not obtain the leave of the Court before presenting a second petition.

IN RE GENTRY, [1910] 1 K. B. 825; 79 L. J. [K. B. 585; 54 Sol. Jo. 252; 17 Minson, 104—Div. Ct.

12. *Petition by several Creditors—Dispute of Some of the Debts—Stay for Trial of the Validity of such Debts—Payment by Debtor into Court of such Debts—Right of Creditors to Refuse such Payments—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 7 (5)—*Bankruptcy Rules, 1886 and 1890, r. 165.*—Where proceedings have been stayed

on a petition for the trial in the county court of the validity of disputed petitioning creditors’ debts, and the debtor has paid into the county court the amount of the debts claimed or established against him, such payment into court is not payment to the creditors, nor are they bound to take such money out of Court, but are entitled to proceed with their petition, although the total of the petitioning creditors’ debts would have been reduced to less than £50, if such money had been taken out of Court.

Brook v. Emerson ((1906) 95 L. T. 821) applied.

Decision of Div. Ct. (*supra*) reversed.

IN RE GENTRY, [1910] 1 K. B. 825; 79 L. J. [K. B. 585; 102 L. T. 553; 54 Sol. Jo. 377; 17 Minson, 104; *sub nom.* IN RE A DEBTOR, EX PARTE PETITIONING CREDITORS AND OFFICIAL RECEIVER, 26 T. L. R. 374—C. A.

13. *Deed of Assignment—Petitioning Creditors Attending Meeting—Dissenting Creditors—Representatives Attending Meeting of Creditors to Report—Estoppel.*—The debtor, on October 25th, 1909, executed a deed of assignment for the benefit of his creditors, and all the creditors except three assented to the deed. On November 2nd the trustee under the deed gave notice to all the creditors of the execution of the deed, and on November 9th he sent a letter requesting the creditors to attend a meeting on November 12th to consider a proposal for the sale of the debtor’s share in the business. The meeting was duly held, at which the three dissenting creditors were represented, but their representatives stated that they had no authority to assent to the proposal, and that they were only there to listen and report. On November 23rd the three dissenting creditors presented a bankruptcy petition against the debtor, the act of bankruptcy alleged being the execution of the deed of assignment. On December 9th one of the dissenting creditors wrote to the trustee requesting the return of certain goods which had been in the possession of the debtor, and which the creditor claimed as his property.

HELD—that the petitioning creditors had not by their conduct estopped themselves from relying on the act of bankruptcy that had been committed by the debtor.

IN RE WALKER, 26 T. L. R. 260—Div. Ct.

14. *Building Society Petitioners—Petition Signed by Secretary—Bankruptcy Rules, r. 258—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 148.]—A bankruptcy petition by a building society, incorporated under the Building Societies Act, 1874, against a debtor was signed by the society’s secretary, who was duly authorised in that behalf.

HELD—that r. 258 of the Bankruptcy Rules had no application to such a case, and, therefore, that the petition did not require to be supported by an affidavit of the secretary stating that he was such secretary and that he was authorised to present the petition.

IN RE TOVEY, 26 T. L. R. 456—Div. Ct.

## XIV. PRACTICE.

See also V., VII., *supra*, XVI., *infra*.

**15. Rejection of Proof for Voting—Time for Appeal—Notice of Appeal—Bankruptcy Act, 1883** (46 & 47 Vict. c. 52), s. 139, *Sched. I*, rr. 7, 14—*Bankruptcy Rules*, 1886, rr. 27, 230.—Notice of appeal against the decision of the official receiver rejecting a proof for the purposes of voting must be served upon the respondents within twenty-one days from the date of such decision, and must give the respondent eight days before he is to be called upon to appear and argue the appeal.

IN RE SMITH, EX PARTE VALENTINE, [1910]  
[W. N. 23; 54 Sol. Jo. 215—Phillimore, J.]

**16. Judgment Summons—Discharge of Order for Payment by Instalments on Application by Creditor—Debtors Act, 1869** (32 & 33 Vict. c. 62), s. 5 (2).—A creditor who has obtained an order under the Debtors Act, 1869, for payment of a judgment debt by instalments is entitled, on default in payment of the instalments, to have the order discharged in order to enable him to take other proceedings for the recovery of the debt.

IN RE MITCHELL, EX PARTE COHEN, [1910]  
[W. N. 24; 54 Sol. Jo. 252—Phillimore, J.]

**17. Appeal—Time for Bringing Appeal—Special Circumstances for Extension of Time—Bankruptcy Rules, 1886—1890, r. 130.**—A mistake of law made by the appellant's solicitors does not constitute special circumstances entitling the appellant to an extension of time for bringing his appeal.

IN RE DEBTOR (No. 692, of 1910), [1910] W. N.  
[221; 55 Sol. Jo. 48—C. A.]

**18. Costs—Appointment of New Trustee—Taxation—Allocatur—No Notice to New Trustee—Retaxation—Bankruptcy Rules, 1886 and 1890, rr. 120, 122.**—At a meeting of the creditors of a bankrupt, at which P. was appointed trustee, a proof by one V. for a large amount was rejected for voting purposes. Subsequently a solicitor was duly appointed to act for the trustee in certain matters relating to the estate. On March 1st, 1910, V. successfully appealed against the rejection of his proof. A new meeting of creditors was thereupon called for March 18th, and on that date W. was appointed trustee in place of P. On March 15th, the solicitor who had acted for P. lodged his bill for costs of taxation and obtained an appointment to tax same, but he gave no notice thereof to the official receiver or to the new trustee as required by rule 120 of the Bankruptcy Rules, 1886 and 1890. On April 22nd the taxing Master, who was not aware of the appointment of the new trustee, taxed the bill and gave his allocatur. The solicitor then applied to the new trustee for payment of the amount of the allocatur, but the trustee declined to pay same, and he now applied that the allocatur might be set aside and that the bill of costs might be remitted for retaxation.

HELD—that the allocatur should be suspended as notice of the appointment to tax the costs

ought to have been given to the new trustee and also to the official receiver, and that the bill of costs must be referred back for retaxation with liberty to the new trustee to attend and to carry in objections if so advised.

IN RE SMITH, EX PARTE WILSON, [1909] 2  
[K. B. 346; 80 L. J. K. B. 16; 102 L. T. 861;  
26 T. L. R. 492—Phillimore, J.]

**19. Costs—Taxation—Seizure by Sheriff under *fi. fa.*—Interpleader—Sale—Sheriff's "Costs of Execution"—Receiving Order—Bankruptcy Act, 1890** (53 & 54 Vict. c. 71), s. 11 (1)—*Bankruptcy Rules*, 1886 and 1890, rr. 118, 119.—A sheriff seized goods under a *fi. fa.* On a claim being made under a bill of sale the sheriff interpleaded. An order was made by consent on the interpleader summons that the sheriff should sell enough to satisfy the bill of sale holder, the execution creditor, and the costs of all parties, including the sheriff. Before the sale was held, a receiving order was made against the debtor. The sheriff sold some of the goods and realised enough to pay everything included in the interpleader order, whereupon the official receiver stopped the sale. The costs were taxed in the King's Bench Division, and the sheriff was allowed (*inter alia*) the judgment creditor's and his own costs of the interpleader. The official receiver subsequently required the sheriff's costs to be taxed under r. 119 of the Bankruptcy Rules. The taxing master in bankruptcy disallowed these costs on the ground that they were not "costs of execution" within sect. 11 (1) of the Bankruptcy Act, 1890.

HELD—(1) that the sheriff's costs on the interpleader summons were "costs of execution" within the section; (2) but that the execution creditor's costs on the interpleader summons were not.

IN RE ROGERS, EX PARTE SHERIFF OF SUSSEX,  
[1911] 1 K. B. 104; [1910] W. N. 238; 103  
L. T. 576; 27 T. L. R. 59; 55 Sol. Jo. 78—  
Phillimore, J.]

**20. Costs—Taxation—Employment of Solicitor by Official Receiver with Sanction of Board of Trade—Limit of Amount of Costs to be Incurred—Bankruptcy Act, 1883** (46 & 47 Vict. c. 52), s. 73—*Bankruptcy Act*, 1890 (53 & 54 Vict. c. 71), s. 15.—When the Board of Trade, in sanctioning the employment of solicitors to act for the official receiver in a bankruptcy, limit the amount of the costs to be incurred, they are at liberty to extend such limit even after the completion of the work on which the solicitors have been employed.

IN RE LAWRENCE AND PORTER, [1910] W. N.  
[270; 55 Sol. Jo. 94—Phillimore, J.]

**21. Discovery—Interrogatories—Application by Petitioning Creditor—Bankruptcy Rules, 1886 and 1890, r. 72—Affidavit of Truth of Statements in Petition—Form 12.**—A petitioning creditor will not be allowed to administer interrogatories to, or to obtain discovery from, a debtor to assist him to support his petition; nor should he use Form 12 in swearing to the truth

## XIV. Practice—Continued.

of the allegations in his petition unless they are true to his knowledge.

IN RE A DEBTOR (No. 7 of 1910), [1910] 2 K. B. 59; *sub nom.* IN RE A DEBTOR, 102 L. T. 691; *sub nom.* IN RE A DEBTOR, EX PARTE PETITIONING CREDITORS, 26 T. L. R. 429; *sub nom.* IN RE A DEBTOR, EX PARTE TAYLOR & Co., LD., 54 Sol. Jo. 459—C. A.

## XV. PRIORITIES.

22. *Preferential Payment—Friendly Society—Bankruptcy of Ex-Treasurer—Debt due to Society—Right of Society to Preferential Payment—Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict. c. 62), s. 2, sub-s. 1—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 35.*—Sect. 35 of the Friendly Societies Act, 1896, provides that "upon the death or bankruptcy of any officer of a registered society having in his possession by virtue of his office any money or property belonging to the society," the trustees of the society are entitled to be paid such money in preference to any other debt or claim against such officer's estate.

HELD—that the above section applied in a case where the bankrupt had ceased to be an officer of the society some time before he became bankrupt, but had not handed over the money in his possession as such officer to the trustees of the society.

*In re Miller* ([1893] 1 Q. B. 327) applied.

IN RE EILBECK, EX PARTE TRUSTEES OF THE [GOOD INTENT LODGE, No. 978, OF THE GRAND UNITED ORDER OF ODDFELLOWS, [1910] 1 K. B. 136; 79 L. J. K. B. 265; 101 L. T. 688; 26 T. L. R. 111; 54 Sol. Jo. 118; 17 Manson, 1—Phillimore, J.

## XVI. PROOF OF DEBTS.

See also No. 7, *supra*.

23. *Secured Creditor—Mortgage—Vendor's Lien—Assessment of Securities as a Whole—Consolidation—Life Policies—Premiums Paid by Mortgagee.*—Where a creditor of a bankrupt is entitled to a small debt charged upon a property of large value and to a large debt charged upon a property of small value, and has no right to consolidate, the trustee in bankruptcy cannot allow him to prove for one aggregate amount stating that he holds one aggregate security, and thus give him the benefit of consolidation, so as to take the unsecured balance of the large debt out of the surplus value of security in the case of the security for the small debt.

In P.'s bankruptcy B. K. & Co. were creditors for £6,497. They held a mortgage executed by P. in their favour of two life policies, of a debt due to P. and of certain freehold property. They also claimed a vendor's lien on certain steamship shares. They lumped together the latter and the mortgage and assessed their total security at £3,806. P.'s trustee admitted their proof for the balance of £2,691, and for this they subsequently received a composition of 12s. in the

pound. The debt due to P. realised more than anticipated, and out of the proceeds of it the trustee paid to B. K. & Co. £2,276, being the value which they had put on this debt and the freehold property. The life policies, valued at £205, realised less than that sum. The bankruptcy having been annulled, P. executed further mortgages on the freehold property and again became bankrupt. The property was sold by a first mortgagee, who paid the balance of the proceeds into Court. Out of this sum B. K. & Co. now claimed to be repaid the unpaid balance of the £3,806.

HELD—that B. K. & Co. were not entitled to have their claim in respect of the steamship shares satisfied out of the sum in Court, but that as the trustee could not compel a creditor to value separate properties comprised in one mortgage they were entitled to have made good the loss on the life policies.

*Pearce v. Bullard, King & Co.* ([1908] 1 Ch. 780; 77 L. J. Ch. 340; 98 L. T. 527; 24 T. L. R. 353; 52 Sol. Jo. 301; 15 Manson, 88—Joyce, J.) overruled.

Decision of Warrington, J., reversed.

HELD FURTHER—that B. K. & Co. were entitled to be repaid with interest the premium paid by them to keep alive the policies from the date of the receiving order and not merely from the date on which they were admitted to prove for the balance due to them as unsecured creditors.

IN RE PEARCE'S TRUSTS, [1909] 2 Ch. 492; 78 L. J. Ch. 628, 784; 100 L. T. 792; 101 L. T. 300; 16 Manson, 191, 265—C. A.

24. *Application to Expunge Proof—Locus standi of Debtor—Scheme of Arrangement—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. II., r. 25.*—A debtor has no *locus standi* to apply to expunge a proof unless there is a proposal for a composition or scheme of arrangement actually lodged with the official receiver at the time when the debtor's application comes on for hearing.

IN RE BENOIST, [1909] 2 K. B. 784; 78 L. J. K. B. 1105; 101 L. T. 432; 53 Sol. Jo. 700; 16 Manson, 276—Phillimore, J.

25. *Unsuccessful Application by Debtor to Expunge Proofs—Scheme Pending—Subsequent Adjudication—Costs of Creditors in Resisting Debtor's Application.*—A receiving order having been made against the debtor, he submitted a scheme of arrangement, and while the scheme was pending he moved to expunge the proofs lodged by two of his creditors. The application was dismissed with costs. The scheme was not sanctioned by the Court, the debtor was adjudicated a bankrupt, and a dividend of 5s. in the pound had been paid to all the creditors by the trustee in the bankruptcy. The Court refused to sanction payment by the trustee of the costs incurred by the two creditors in the application by the bankrupt to expunge their proofs.

IN RE PILLING, [1909] 2 K. B. 788; 78 L. J. K. B. 1107; 101 L. T. 433; 25 T. L. R. 809; 16 Manson, 280—Phillimore, J.

### XVI. Proof of Debts—Continued.

**26. Bankruptcy of Trustee—Trustees Absconding—No other Trustee—Cestuis que Trustent Proving for Debt.**—Where trustees have become bankrupt the cestuis que trustent may prove personally against the bankrupt estate if they obtain the leave of the Court.

IN RE BRADLEY, EX PARTE WALTON, 54 Sol. Jo. [377—Phillimore, J.

**27. Rejection of Proof—New First Meeting—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. I., rr. 1—9.]**—The Court will not direct a new first meeting of creditors to be held at the instance of a creditor whose proof was rightly rejected at the first meeting of creditors, but has since been put in order and been ordered to be admitted.

Order of Phillimore, J. (*In re Bradley, Ex parte Walton, supra*) varied.

IN RE BRADLEY, EX PARTE BOURNER, 54 Sol. Jo. [444—C. A.

### XVII. PROPERTY OF BANKRUPT.

#### (a) Generally.

**28. Property Held by Bankrupt on Trust for Another Person—Composition with Creditors—Assignment of Bankrupt's Property to Him in Trust for His Wife—Liability of Bankrupt under Leases—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44.]**—The defendant was the assignee of two leases granted by the plaintiffs which contained the usual covenants, including a covenant not to assign without the lessors' consent. He agreed to sell these leases to his wife, and to execute a proper assignment to her provided that the lessors' consent was previously obtained. No assignment was in fact ever executed, but the purchase-money was paid by the wife out of her separate estate. Subsequently the defendant became bankrupt, and the trustee in bankruptcy, in consideration of moneys sufficient to pay a dividend of 10s. in the pound, assigned to the defendant, as trustee for his wife, the whole of the defendant's estate. The plaintiffs had no notice of the agreement for sale to the defendant's wife, nor of the bankruptcy, nor of the assignment by the trustee in bankruptcy. The plaintiffs sued the defendant for arrears of rent due at the expiration of the terms of the leases and for breach of covenant to repair.

**HELD**—that the residue of the terms created by the leases vested in the trustee in bankruptcy, who stood possessed of the same, subject to satisfying his own lien, for the defendant's wife, and they passed from the trustee in bankruptcy to the defendant under a new title; and that, this being so, the defendant was liable as assignee, and his bankruptcy was no answer to the plaintiffs' claim.

Decision of Hamilton, J., reversed.

GOVERNORS OF ST. THOMAS'S HOSPITAL v. [RICHARDSON, [1910] 1 K. B. 271; 79 L. J. K. B. 488; 101 L. T. 771; 17 Manson, 129—C. A.

**29. Attachment of Debt—Judgment Creditor of Scottish Debtor—Debt due to Judgment Debtor in England—Garnishee Order in England—Subsequent Bankruptcy in Scotland of Judgment Debtor—Claim by Scottish Trustee in Bankruptcy—Rights of Trustee—Bankruptcy (Scotland) Act, 1856 (19 & 20 Vict. c. 79)—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 45, 117.]**—The judgment creditor of a Scottish debtor obtained a garnishee order nisi in respect of a debt due to the judgment debtor in England and served it upon the garnishee. Shortly afterwards the judgment debtor was made a bankrupt in Scotland and a trustee was appointed by an order which had the effect of vesting in him all the property of the bankrupt wherever situate.

**HELD**—that the judgment creditor was entitled to receive the debt in priority to the Scottish trustee in bankruptcy.

Decision of C. A. ([1910] 1 K. B. 339; 79 L. J. K. B. 369; 102 L. T. 113; 17 Manson, 86) affirmed.

GALBRAITH v. GRIMSHAW AND BAXTER, [1910] [A. C. 508; 79 L. J. K. B. 1011; 103 L. T. 294; 54 Sol. Jo. 634; 17 Manson, 183—H. L.

**30. Sale of Goods—Fraud of Buyer—Bankruptcy—Seller's Right to Disaffirm Sale—Title of Trustee in Bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 43, 44.]**—Where a contract for the sale of goods is induced by the buyer's fraudulent misrepresentations, the seller may disaffirm the contract and re-take possession of the goods after the date of a receiving order made against the buyer.

TILLEY v. BOWMAN, LD., [1910] 1 K. B. 745; [79 L. J. K. B. 547; 102 L. T. 318; 54 Sol. Jo. 342; 17 Manson, 97—Hamilton, J.

**31. Marriage Settlement—Covenant to Settle After-acquired Furniture—"Actually Transferred"—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47 (2).]**—The debtor on his marriage executed a settlement containing a covenant to settle his after-acquired furniture. He from time to time purchased furniture which was used in his home, but no list was furnished to the trustee of the settlement nor did the trustee know the amount so purchased; but he was in the habit of visiting the debtor at the house.

**HELD**—that the use of the furniture at a house which was purchased in the wife's name, where it ought to have been used, constituted an actual transfer to the trustee within the meaning of sect. 47, sub-sect. 2, of the Bankruptcy Act, 1883, and that the trustee in bankruptcy had no right to claim the furniture.

Decision of Phillimore, J. ([1910] W. N. 190; 54 Sol. Jo. 721) affirmed.

IN RE MAGNUS, EX PARTE SALAMAN, [1910] [2 K. B. 1049; 80 L. J. K. B. 71; 103 L. T. 406—C. A.

#### (b) Order and Disposition.

[No paragraphs in this vol. of the Digest.]

#### (c) Undischarged Bankrupt—After-acquired Property.

[No paragraphs in this vol. of the Digest.]



## XVIII. RECEIVING ORDER.

See also No. 30, *supra*.

**32. Decree for Dissolution of Marriage—Order for Payment of Costs by Co-respondent—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 103, sub-s. 5—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5.]**—Although a decree *nisi* for dissolution of marriage containing an order for the payment of the petitioner's costs by the co-respondent is not a final judgment upon which a bankruptcy notice can be founded, a receiving order may, nevertheless, be made against the co-respondent upon a judgment summons in lieu of committing him to prison for default in payment of the money due under the order.

IN RE HALLMAN, EX PARTE ELLIS AND [COLLIER, [1909] 2 K. B. 430; 78 L. J. K. B. 1009; 100 L. T. 861; 25 T. L. R. 607; 53 Sol. Jo. 544; 16 Manson, 274—Phillimore, J.

**33. No Scheme Accepted—Postponement of Adjudication—Wishes of Creditors—Bankruptcy Rules, 1886 to 1890, r. 192.]**—Under ordinary circumstances, where a receiving order has been made, unless a scheme is accepted either at the first meeting of creditors or at one adjournment thereof, on the application of the official receiver the debtor may be adjudicated a bankrupt against the wishes of the creditors, although the Court will have regard to them.

IN RE DEBTOR (No. 518 of 1910), 130 L. T. Jo. [176—C. A.

## XIX. SCHEME OF ARRANGEMENT.

See No. 33, *supra*.

## XX. SET-OFF.

**34. Mutual Dealings—Contract to Purchase Real Estate—Purchase-Money—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 38.]**—A person who has a contract to purchase real estate from the bankrupt entered into prior to the receiving order can set off a debt due to him from the bankrupt at the date of the receiving order against the purchase-money due under the contract.

Decision of Div. Ct. (101 L. T. 687; 26 T. L. R. 100; 54 Sol. Jo. 102) affirmed (Moulton, L.J. dissenting).

IN RE TAYLOR, EX PARTE NORVELL, [1910] 1 K. B. 562; 79 L. J. K. B. 610; 102 L. T. 84; 17 Manson, 145; *sub nom.* IN RE TAYLOR, EX PARTE SUTCLIFFE, 26 T. L. R. 270; 54 Sol. Jo. 271—C. A.

**35. Sale of Goods—Fraudulent Misrepresentation by Buyer—Bankruptcy of Buyer—Damages—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 38.]**—Where a contract for the sale of goods is induced by the buyer's fraudulent misrepresentations, a claim for damages for the fraudulent misrepresentation may be set off under the mutual credit clause (sect. 33) of the Bankruptcy Act, 1883, against a claim by the buyer to recover

back the money paid under the contract of sale which has been rescinded.

TILLEY v. BOWMAN, LD., [1910] 1 K. B. 745; [79 L. J. K. B. 547; 102 L. T. 318; 54 Sol. Jo. 342; 17 Manson, 97—Hamilton, J.

See S. C. under XVII. (a), *supra*.

## XXI. TRUSTEE.

See also No. 29, *supra*.

**36. Default of Trustee—Fidelity Bond—Liability of Assurance Company under Bond to Board of Trade—Penal Interest Payable by Trustee—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 74 (6).]**—When an assurance company gives a bond to the Board of Trade to make good any loss or damage occasioned to the bankrupt's estate by any default of the trustee it is not liable to make good the trustee's default in payment of the penal interest exacted from him, under sect. 74, sub-sect. 6, of the Bankruptcy Act, 1883, for improper retention of the moneys of the estate.

Decision of Phillimore, J. ([1910] 1 K. B. 401; 79 L. J. K. B. 434; 101 L. T. 862; 26 T. L. R. 167; 54 Sol. Jo. 136; 17 Manson, 81) reversed.

BOARD OF TRADE v. EMPLOYERS' LIABILITY [ASSURANCE CORPORATION, LD., [1910] 2 K. B. 649; 79 L. J. K. B. 1001; 102 L. T. 850; 26 T. L. R. 511; 54 Sol. Jo. 581—C. A.

**37. Default of Trustee—Fidelity Bond—Forfeited Remuneration—Set-off—Bankruptcy Act, 1882 (46 & 47 Vict. c. 52), s. 74 (6).]**—Where a fidelity guarantee society contracts to make good whatever money is not properly accounted for by a trustee in bankruptcy, and the trustee makes default, no question of set-off can arise in respect of remuneration which would have been due as having been earned, if the trustee had made no default, as that remuneration is declared by statute to be forfeited and is therefore no longer due to the trustee who has made default.

BOARD OF TRADE v. GUARANTEE SOCIETY, [1896] [1910] 1 K. B. 408, n.—Div. Ct.

**38. Bankruptcy of Judgment Creditor—Leave to Trustee to issue Execution—Not made Party to Action—Right to issue Bankruptcy Notice—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), ss. 1, 4—R. S. C. Ord. 17, r. 4; Ord. 42, r. 23.]**—Where a judgment creditor becomes bankrupt, his trustee in bankruptcy need not be made a party to the action under Ord. 17, r. 4, before obtaining leave to issue execution under Ord. 42, r. 23, and, having obtained that leave, is under sect. 1 of the Bankruptcy Act, 1890, to be deemed a creditor for the purposes of sect. 4 of the Bankruptcy Act, 1883.

Dictum of Cotton, L.J., in *In re Woodall* (1884) 13 Q. B. D. 479, 483) approved.

Dictum of Wright, J., in *In re Clements* ([1901] 1 Q. B. 260, 263) dissented from.

IN RE BAGLEY, [1910] W. N. 224; 103 L. T. [470; 55 Sol. Jo. 48—C. A.

## XXII. VOLUNTARY ASSIGNMENT.

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- II. CUSTODY OF BASTARDS.  
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HOUSES.**

*See* LOCAL GOVERNMENT, No. 19 ; PUBLIC  
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**BATTERY.**

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**BENCH WARRANTS.**

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**I. BILLS OF EXCHANGE.**

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**II. PROMISSORY NOTES.**

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1. *Validity—Sum Stated in Figures in Margin—Not Stated in Body of Note—Bills of Exchange Act, 1882.* (45 & 46 Vict. c. 61), s. 83.]—A promissory note, bearing an embossed 6d. stamp, with the figures £50 in the margin, but no sum stated in the body of the note, held to be, as between the original parties to it, a valid and complete note for £50, there being evidence to show that they had so regarded it, and a finding by the judge at the trial without a jury, that it was given in payment of a debt of £50. *HEENEY v. ADDY*, [1910] 2 I. R. 688—Div. Ct., [Ireland.

**III. INSTRUMENTS NEGOTIABLE BY  
MERCANTILE USAGE.**

2. *Receipt for Army Pension—Paymaster-General's Pay Warrant.*—A form of receipt, signed by a retired army officer for the amount of his pension due and having the following note at the foot :—"This receipt must be presented for payment by a London banker, but may be negotiated in the country or abroad, and is to be left by the banker at the Paymaster-General's office one day for examination," is not a negotiable instrument.

*JONES & Co. v. COVENTRY*, [1909] 2 K. B. 1029 ; [79 L. J. K. B. 41 ; 101 L. T. 281 ; 25 T. L. R. 736 ; 53 Sol. Jo. 734—Div. Ct.

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## BILLS OF SALE.

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### I. GENERALLY.

1. *Oral Purchase of Furniture by Landlord—Receipt for Purchase-Money with Inventory Attached—Letting of Furniture to Tenant on Hire-Purchase Agreement—Distress for Rates—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), ss. 4, 8—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 9—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 17, 18.*—The plaintiffs granted a lease of the St. J. Hall to a company. The rent being in arrear the plaintiffs threatened to distrain, but offered to purchase the furniture and fittings in the hall for £1,500 to be applied in reduction of rent. P., the manager of the company, did not wish the furniture, etc., to be removed, as he hoped shortly to sell the hall as a going concern. Eventually the plaintiffs agreed to let the furniture, etc., to the company for six months at a rent of £9 a month with the option of re-purchase at £1,500, and the following transaction took place at the plaintiffs' solicitor's office. Two cheques for £500 and £1,000 were first handed to P., who gave a chair to the plaintiffs' managing director in symbolical delivery of all the furniture, etc. P. then signed a receipt for the £1,500, with an inventory of the furniture, etc., attached, and afterwards the hire-purchase agreement was exchanged in duplicate. The cheques were then endorsed and handed back to the plaintiffs' solicitors.

HELD—that there was a *bonâ fide* oral purchase of the furniture, etc., completed by payment of the cheques, and manual delivery of goods before the receipt with inventory attached was signed, which document was not intended to be an assignment of the goods, but only to be a record of the transaction; and therefore that the Bills of Sale Acts did not apply.

PRUDENTIAL MORTGAGE CO., LD. *v.* ST MARY—  
[LEBONE BOROUGH COUNCIL, 8 L. G. R. 901  
—Neville, J.]

2. *Consideration—Mortgage—Defeasance of Bill of Sale—Jurisdiction of Bankruptcy Court—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 4 (1) (b), 10—Bills of Sale Acts, 1878 (41 & 42 Vict. c. 31), s. 10 (3); 1882 (45 & 46 Vict. c. 43), s. 8.*—Where A. had borrowed a sum of money from B., and lent the same to himself and his co-trustee C., and A. and C.

had given a bill of sale to B. to secure the loan, it was held that the consideration was truly stated as a loan from B. to A. and C. A. and C., prior to the granting of the bill of sale, had given mortgages of leaseholds to B. to secure the same loan.

HELD—that the mortgages did not operate as a defeasance of the bill of sale.

IN RE F. & J. JONES, EX PARTE OFFICIAL RECEIVER, 55 Sol. Jo. 30—Div. Ct.

### II. REGISTRATION.

3. *Defeasance or Condition not Contained in Bill of Sale—Registration Void—Effect—Avoidance of Bill—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10 (3)—Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), ss. 8, 9.*—A condition not contained in a bill of sale, otherwise duly registered in proper form, but communicated to the grantor before the completion of the loan transaction, has the effect, not only of avoiding the registration under sect. 10 (3) of the Bills of Sale Act, 1878, so as to make the bill of sale void under sect. 8 of the Bills of Sale Act (1878) Amendment Act, 1882, in respect of the personal chattels contained therein, but of making the bill of sale wholly void under sect. 9 of the Act of 1882, so as to render a covenant to pay interest contained therein unenforceable.

Decision of Grantham, J. affirmed.

SMITH *v.* WHITEMAN AND ANOTHER, [1909]  
[2 K. B. 437; 78 L. J. K. B. 1073; 100 L. T.  
770; 16 Manson, 283—C. A.]

### III. SEIZURE.

[No paragraphs in this vol. of the Digest.]

### IV. STATUTORY FORM.

4. *Ambiguity—Installments—Principal and Interest—Bills of Sale Act, 1878, Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 9.*—The plaintiff on receiving from the defendant an advance of £30 agreed to repay the £30, with interest at 10*d.* in the £1, by monthly instalments of £2, such instalments to include interest. The plaintiff granted a bill of sale to the defendant whereby he agreed to repay the principal sum of £30, together with interest due, by instalments of £2 to be paid on a fixed day of each succeeding month, and further agreed that in default of payment of any instalment of the said principal sum he would pay interest on such unpaid instalment at the rate of 10*d.* in the £1.

HELD (Moulton, L.J., dissenting)—that the bill of sale was not void as not expressing the true bargain between the parties, or as not being in accordance with the form in the schedule to the Bills of Sale Act, 1878, Amendment Act, 1882.

Decision of Bray, J. affirmed.

ROSEFIELD *v.* PROVINCIAL UNION BANK,  
[1910] 2 K. E. 781; 79 L. J. K. B. 1150;  
103 L. T. 378—C. A.]

**BIRTH, PROOF OF.***See* EVIDENCE.**BIRTHS, DEATHS & MARRIAGES (REGISTRATION OF).***See* EXECUTORS AND ADMINISTRATORS; HUSBAND AND WIFE; INFANTS; MEDICINE AND PHARMACY.**BISHOPS.***See* ECCLESIASTICAL LAW.**BLACKMAIL.***See* CRIMINAL LAW AND PROCEDURE.**BLASPHEMY.***See* CRIMINAL LAW AND PROCEDURE.**BOARDING-HOUSES.***See* INNS AND INNKEEPERS; LANDLORD AND TENANT.**BONDS.***See* BANKRUPTCY; BILLS OF EXCHANGE; DEATH DUTIES, No. 1; DEEDS AND OTHER DOCUMENTS; EXECUTORS AND ADMINISTRATORS; LIMITATION OF ACTIONS; PRACTICE.**BOOKS, ENTRIES IN.***See* BANKERS AND BANKING; DISCOVERY; EVIDENCE.**BOROUGHES.***See* LOCAL GOVERNMENT.**BORSTAL SYSTEM.***See* CRIMINAL LAW AND PROCEDURE, Nos. 43, 44.**BOTTOMRY.***See* SHIPPING AND NAVIGATION.**BOUGHT AND SOLD NOTES.***See* STOCK EXCHANGE.**BOUNDARIES AND FENCES.**

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**BROKERS.**

See AGENCY; SALE OF GOODS; STOCK EXCHANGE.

**BROTHELS.**

See CRIMINAL LAW AND PROCEDURE.

**BUILDING CONTRACTS,  
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**I. ARCHITECTS.**

See LOCAL GOVERNMENT, No. 9.

**II. BUILDING CONTRACTS.**

See also NUISANCE, Nos. 4, 5.

1. *Tender—Payment of Deposit—Representation that Contract contained the "Ordinary Conditions"—Unusual Conditions—Recovery of Deposit.*—The defendant corporation advertised for tenders for the construction of certain reservoirs. The plaintiffs, a firm of contractors, sent in a tender which was accepted. Upon their attending to examine the drawings, specifications, and general conditions, the assistant engineer of the defendants, in answer to a question, said the conditions were the ordinary conditions. The defendants, upon subsequently reading the conditions, found that they were unusual, refused to go on with the contract, and sought to recover a sum of £101 1s., which they had paid as a deposit.

HELD—that the plaintiffs were entitled to recover.

MOSS & Co., LD. v. SWANSEA CORPORATION,  
[74 J. P. 351—Channell, J.]

2. *Extras—Implied Promise to Pay—Inference of Fact—Award.*—A building contract contained a clause providing that no works beyond those included in the contract would be allowed or paid for without an order in writing from the employer and architect. During the progress of the work the employer insisted upon the execution of certain works which he alleged were included in the contract, but the contractor maintained that they were extras, and would be charged as such. No order in writing was given for the execution of these works.

HELD—that an arbitrator was justified in inferring an implied promise by the employer to pay for the works either as included in the contract price or as extras if they should be found to be extras.

Decision of Supreme Court of Western Australia affirmed.

MOLLOY v. LIEBE, 102 L. T. 616; 47 Sc. L. R. [909—P. C.]

**BUILDING SOCIETIES.****I. RULES.**

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**I. BURIAL GROUNDS.**

1. *Poor Rate—Occupation—Burial Ground Provided under Church Building Acts—Liability of Incumbent to Poor Rate in Respect of Profit Derived from Burial Ground—Poor Rate Exemption Act, 1833 (3 & 4 Will. 4, c. 30), s. 1.*—A burial ground which has been duly consecrated is not exempt from rates under the Poor Rate Exemption Act, 1833. And an incumbent in whom the freehold of such a burial ground is vested, and who receives a profit from fees in respect of grants of exclusive right of burial and the like therein, is liable as the occupier of the ground to poor rates.

Decision of C. A. ([1908] 1 K. B. 835; 77 L. J. K. B. 661; 98 L. T. 781; 72 J. P. 172; 24 T. L. R. 388; 6 L. G. R. 427) affirmed.

WINSTANLEY v. NORTH MANCHESTER OVER-SEERS, [1910] A. C. 7; 79 L. J. K. B. 95; 101 L. T. 616; 74 J. P. 49; 26 T. L. R. 90; 54 Sol. Jo. 80; 8 L. G. R. 75—H. L.

**II. CHURCHYARDS.**

[No paragraphs in this vol. of the Digest.]

**III. DISUSED BURIAL GROUNDS.**

1. *Unconsecrated Ground Closed by Order in Council—Vested in Rector and Churchwardens—Right to Administer Income—Parish—Vestry—Borough Council—Church Property—Burial Act, 1857 (20 & 21 Vict. c. 81), s. 24—London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 4, 23.*—Upon an unconsecrated portion of land,

**III. Disused Burial Grounds—Continued.**

which was originally acquired for the purposes of a cemetery in the reign of George III. and vested by a statute in the rector and churchwardens of St. George's, Hanover Square, certain buildings were erected.

**HELD**—that the land on which the buildings were erected was vested in the rector and churchwardens as ecclesiastical persons; that the Burial Act, 1857, had not divested them of the rights and liabilities in connection with such land; that the land was Church property, and therefore that those rights and liabilities had not passed to the respondent corporation under the London Government Act, 1899.

Decision of C. A. ([1909] 1 Ch. 592; 78 L. J. Ch. 581; 100 L. T. 546; 73 J. P. 259; 25 T. L. R. 393; 53 Sol. Jo. 357; 7 L. G. R. 774) reversed.

**RECTOR AND CHURCHWARDENS OF ST. GEORGE'S, HANOVER SQUARE v. WESTMINSTER CORPORATION**, [1910] A. C. 225; 79 L. J. Ch. 310; 102 L. T. 290; 74 J. P. 153; 26 T. L. R. 327; 54 Sol. Jo. 325; 8 L. G. R. 337—H. L.

**IV. EXHUMATION OF REMAINS.**

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**CARRIERS.**

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See also **ANIMALS, No. 6; SHIPPING, V.; TRAMWAYS, No. 7.**

**I. RIGHTS AND LIABILITIES.**

1. *Common Carrier—Dangerous Goods—Liability of Consignor—Dangerous Character of Goods Not Known to Consignor—Implied Warranty—Misdescription—Neglect of Duty.*—*Per Moulton and Farwell, L.J.J.*—Where a common carrier receives as such a quantity of general cargo, the nature of which he does not know and is not told, and which contains goods that are dangerous and therefore unfit for carriage as general cargo, he can maintain an action for damages arising out of the dangerous character of the goods against the consignors, on an implied warranty of the fitness of the goods for carriage as general cargo, even though the consignors themselves neither knew nor ought to have known the dangerous nature of the goods.

*Per Vaughan Williams, L.J.* (who dissented on the point of implied warranty).—In such circumstances the consignors are liable on the ground of negligence where they have failed in their duty to communicate such information as they



### I. Rights and Liabilities—*Continued.*

had as to the nature of the goods to be carried, as, for instance, where they have consigned ferro-silicon, a dangerous chemical though not known to them as dangerous, under the head of general cargo.

*Brass v. Maitland* (1856) 6 E. & B. 470). *Acutos v. Burns* (1878) 3 Ex. D. 282) discussed; *Sheffield Corporation v. Barclay* ([1905] A. C. 392) applied.

Decision of Walton, J. affirmed.

*BAMFIELD v. GOOLE AND SHEFFIELD TRANS-PORT CO., LD.*, [1910] 2 K. B. 94; 79 L. J. K. B. 1070; 103 L. T. 201—C. A.

**2. Warehousemen—Carriage by Water Ancillary to Business of Warehousemen—Liability as Common Carriers.**—The defendants, who were warehousemen of tea, undertook, in respect only of tea intended to be stored in their warehouse, to have it carried to their warehouse from the ship by which it was imported.

**HELD**—that the carriage of the goods by water was undertaken only for a limited class of customers and was merely ancillary to the defendants' business as warehousemen, and, therefore, that the defendants did not in respect of such carriage undertake the liability of common carriers.

*CONSOLIDATED TEA AND LANDS CO. v. OLIVER'S [WHARF]*, [1910] 2 K. B. 395; 79 L. J. K. B. 810; 102 L. T. 648; 26 T. L. R. 388; 54 Sol. Jo. 506; 15 Com. Cas. 212—Hamilton, J.

**3. Ship—Passenger—Loss of Luggage—Felonious Act of Servant—Conditions on Ticket.**—The plaintiff was a passenger by the defendants' steamship, and while on board she lost some of her luggage, as she alleged, by the felonious act of one of the defendants' servants. The ticket which had been issued to her by the defendants contained the following condition:—"The steamer, her owners, and/or charterers are not responsible for any loss, damage, injury, delay, detention . . . of or to passengers or their baggage or effects . . . by whatsoever cause or in whatever manner the matters aforesaid may be occasioned and whether arising from the act of God, King's enemies . . . collision, fire, thieves (whether on board or not) . . . or from any act, neglect, or default whatsoever of the pilot, master, mariners, or other servants of the steamer, her owners and/or charterers, or from restriction of quarantine, or from sanitary regulations or precautions which the ship's officers or local government authorities may deem necessary, or the consequences thereof, or otherwise howsoever; the passengers taking upon themselves all risk whatsoever of the passage to themselves, their baggage, and effects, including risks of embarking and disembarking, and whether by boat or otherwise."

**HELD**—that even assuming the loss of the plaintiff's luggage was occasioned by the felonious act of a servant of the defendants the above-quoted condition was wide enough to protect the defendants from liability.

**HELD ALSO**, on the facts—that the defendants had taken reasonable steps to bring the conditions on the ticket to the notice of the plaintiff.

*MARRIOTT v. YEOWARD BROTHERS*, [1909] 2 [K. B. 987; 79 L. J. K. B. 114; 101 L. T. 394; 25 T. L. R. 755; 53 Sol. Jo. 790; 14 Com. Cas. 279; 11 Asp. M. C. 306—Pickford, J.

### II. RAILWAYS.

#### (a) Passengers' Luggage.

[No paragraphs in this vol. of the Digest.]

#### (b) Carriage of Animals.

**4. Feeding during Transit—Implied Request—Contagious Diseases (Animals) Act, 1878** (41 & 42 Vict. c. 74), s. 33.]—Where, owing to the length of the journey or other special circumstances, it is reasonably necessary that animals should be fed during transit, a request on the part of the consignor that the railway company shall feed them may be implied. The company supplying food and water under such circumstances may recover the additional charges made in respect thereof from the consignor and the consignee as provided by sect. 33, sub-sect. 5, of the Contagious Diseases (Animals) Act, 1878.

*(GREAT SOUTHERN AND WESTERN RY. v. [HOURIGAN]*, 44 I. L. T. 86—Gibson, J., Ireland.

#### (c) Carriage of Goods.

**5. Damageable Goods not Protected by Packing—Condition—Carried at Owner's Risk—Reasonable Condition—Railway and Canal Traffic Act, 1854** (17 & 18 Vict. c. 31), s. 7.]—For many years a railway company carried for the plaintiff flushing cisterns, with projecting parts, not protected by packing, at the company's risk. Damage to the projecting parts having frequently occurred during transit, the company gave him notice that these goods, unless protected by packing, would only be carried at the owner's risk.

Subsequently the plaintiff delivered to the company for carriage flushing cisterns not protected by packing, and signed a consignment note by which he agreed to relieve the company from liability for all loss or injury to the goods except upon proof that it arose from wilful misconduct on the part of their servants. The note contained a statement that the company would not be carriers of flushing cisterns and numerous other "damageable goods" with the ordinary liability of a railway company except when properly protected by packing, but that consignors might send them unpacked upon the above-stated terms. One of the "general conditions" on the note stated that "the company will not be liable for any loss of or damage to or delay of goods resulting from their not being properly protected by packing." The same rate was charged for these goods whether packed or unpacked.

**HELD** (Vaughan Williams, L.J., dissenting)—that the contract was just and reasonable, within sect. 7 of the Railway and Canal Traffic Act, 1854, and protected the company from liability

II. Railways—Continued.

for damage to the goods during transit unless it arose from wilful misconduct of their servants.

SUTCLIFFE v. GREAT WESTERN Ry. Co., [1910]  
[1 K. B. 478; 79 L. J. K. B. 437; 101 L. T.  
930; 26 T. L. R. 205; 54 Sol. Jo. 198—C. A.

CEMETERY.

See BURIAL AND CREMATION.

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See CROWN PRACTICE.

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CHARGING ORDER.

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CHARITIES.

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I. ADMINISTRATION OF CHARITABLE TRUSTS.

(a) Generally.

1. Fund Subscribed for a Particular Purpose  
—Application of Surplus to Similar Purposes

—Cy-près.]—A fund was subscribed for the relief of the widows and orphans of six fishermen who were drowned. The fund was vested in trustees who proposed to treat part of it as a permanent fund for the relief of similar cases of distress.

HELD—that until a surplus was proved to exist the trustees were not entitled to apply any part of the fund in the proposed manner, and that if and when a surplus was proved to exist the Court would have jurisdiction to apply it cy-près.

CROSS v. LLOYD GREAME, 102 L. T. 163; 26  
[T. L. R. 171; 54 Sol. Jo. 152—Eve, J.

2. "Public Trust" — Power of Majority of Trustees to Bind Minority.]—The rule that in the administration of a public trust the act of the majority of the trustees is to be treated as the act of the whole body is not limited to cases where the act is one in which the public or particular members of the public affected by the trust have a direct interest. In this connection the words "public" and "charitable" are synonymous.

Wilkinson v. Malin ((1832) 2 Tyrw. 544) applied.

IN RE WHITELEY, BISHOP OF LONDON v.  
[WHITELEY, [1910] 1 Ch. 600; 79 L. J. Ch.  
405; 102 L. T. 313; 26 T. L. R. 309—Eve, J.

3. Trust for Scholarships at Denominational School—School "Ceasing to Exist"—Discretion of Trustees as to Funds.]—A trust deed of 1881 recited that certain persons had paid £1,498 to trustees for the purpose of founding two scholarships for the benefit of scholars of the Sheffield Wesleyan Proprietary Grammar School, and clause 3 of the deed provided that "if and whenever the said school shall cease to exist [the trustees should] apply the net income arising from the said sum of £1,498 in or towards the advancement and encouragement of education and learning as the trustees shall in their absolute discretion think best, provided nevertheless that in the event of the said school becoming vested in a corporate body for the purposes of a school or college and its constitution being thereby changed, the trusts hereof shall be executed in favour of such school or college so incorporated so far as they can reasonably be made applicable in priority to any other application of the said net income." In 1883 the body of proprietors of the school was incorporated under the Companies Acts by the name of the Sheffield Wesleyan Proprietary Grammar School, which in 1884 was changed to that of Wesley College, Sheffield. The school continued to be mainly a denominational school, but it was not exclusively so as it had previously been. In 1904 the school premises were sold to the defendants as the education authority under the Education Act, 1902, and thereafter the school was carried on on undenominational lines.

HELD—(1) that the school had "ceased to exist" within the meaning of the trust deed when the proprietary body was incorporated and became the Wesley College, Sheffield; (2) that the proviso to clause 3 then came into and con-

### I. Administration of Charitable Trusts—*Continued.*

tinued in operation so long as the school was carried on by the old body of proprietors; (3) that when the school was transferred to the defendants the proviso ceased to operate; and (4) that thereafter the discretion of the trustees under clause 3 as to the application of the income was interfered.

IN RE BARRETT'S TRUST, DYSON v. MAYOR, ETC.,  
[OF SHEFFIELD, 26 T. L. R. 330—Warrington, J.

#### (b) Schemes.

4. *Power to Make Payments to Charities out of the Jurisdiction.*—A scheme for the administration of a charity, which had been sanctioned by the Court, contained a clause which provided that the income of the charity should be applied for the benefit of a certain hospital "or such other medical charity or charities of any kind, school, or teaching whatsoever, and partly or exclusively to one or other of such objects as the trustees might in their uncontrolled discretion from time to time determine."

HELD—that the expression "medical charity or charities" was limited to medical charities within the jurisdiction; and, therefore, that the trustees were not entitled to make payments to medical charities in Scotland.

IN RE MIRBLEES CHARITY, MITCHELL v. ATTORNEY-GENERAL, [1910] 1 Ch. 163; 79 L. J. Ch. 73; 101 L. T. 549; 26 T. L. R. 77—Joyce, J.

5. *Secondary School—Religious Instruction—Carried on at a Loss—Modification of Scheme to enable Grant from Board of Education.*—Where a school providing secondary education for girls could, in consequence of new regulations for secondary schools issued in 1907, only become eligible for the Government grants, which were required to prevent its being carried on at a loss, if its existing scheme were modified by eliminating words requiring the head-mistress to be a member of the Church of England, and providing that no catechism or distinctive formula should be taught in the school except in cases where the parent requested it, the application of the governors of the school for a modification of the existing scheme in those respects was granted.

IN RE QUEEN'S SCHOOL, CHESTER, [1910] 1 Ch. 796; 79 L. J. Ch. 270; 102 L. T. 485; 26 T. L. R. 297; 54 Sol. Jo. 309—Eve, J.

6. *Cy-près—Order of Charity Commissioners—Jurisdiction—Review.*—The duty of the Charity Commissioners is to give effect to the directions of the founder of the charity, provided that such directions are not contrary to public policy, and there can be no question of *cy-près* until it is clearly established that such directions cannot be carried out. An application of a fund *cy-près*, therefore, merely on the ground that the objects directed by the testator are not the most advantageous way of employing the fund, is

unsound in principle, and will be reviewed by the Court, though the Court will not interfere with a scheme properly made by the Commissioners merely on the ground that some of the details are open to objection.

*Per* Farwell, L.J.—The Court can refuse to sanction a scheme which has been framed by the Charity Commissioners, but there is no provision which enables the Court to enforce repayment of money mistakenly applied by the Commissioners.

Decision of Eve, J. ([1910] W. N. 82; 79 L. J. Ch. 369; 102 L. T. 354; 26 T. L. R. 366; 54 Sol. Jo. 376) reversed.

IN RE WEIR HOSPITAL, [1910] 2 Ch. 124; 79 L. J. Ch. 722; 102 L. T. 882; 26 T. L. R. 519; 54 Sol. Jo. 600—C. A.

### II. CHARITABLE GIFTS.

See also WILLS, Nos. 42, 43 and XXVIII.

#### (a) Generally.

7. *Legacy to Hospital to "Found a Bed"—Investment of Legacy.*—Where a legacy is given to a hospital for the purpose of establishing a bed to bear a specified name, the sum bequeathed must be invested and the income thence arising applied to the needs of the bed, whatever be the precise language used, if an intention appears that the sum should be treated as capital.

ATTORNEY-GENERAL v. BELGRAVE HOSPITAL, [1910] 1 Ch. 73; 79 L. J. Ch. 75; 101 L. T. 628; 26 T. L. R. 40; 54 Sol. Jo. 31—Eady, J.

8. *Society with Religious Object—Bequest for Payment of Expenses of Dinners—Whether Valid as Ancillary to Main Object.*—Where a local clerical society, whose aims were religious, held meetings for the discussion of religious and educational matters, such meetings being succeeded by luncheons or dinners, a bequest for payment of the expenses of the dinners, formerly paid for by the members of the society themselves, was held to be a valid charitable gift as tending to increase the attendance of members and incidentally advance the main religious objects of the society.

IN RE CHARLESWORTH, ROBINSON v. ARCH-DEACON OF CLEVELAND, [1910] W. N. 18; 101 L. T. 908; 26 T. L. R. 214; 54 Sol. Jo. 196—Eve, J.

9. *Devise to Livery Company—"Charity"—For General Purposes—Followed by Words Appropriate to Charitable Gift.*—It is well settled that livery companies of the City of London, in the absence of anything special in their charter, are not "charities" in the legal sense of the word.

A devise to a livery company for the general purposes of the company was followed by directions and words appropriate to a charitable gift.

HELD—that the livery company were entitled subject to obtaining the proper licence, to have

## II. Charitable Gifts—Continued.

the property conveyed to the company, free of any charitable trust.

IN RE MEECH'S WILL, BUTCHERS' COMPANY *v.* [RUTLAND, [1910] 1 Ch. 426; 79 L. J. Ch. 209—Parker, J.]

10. *Blind Persons Resident in Newcastle-on-Tyne—Validity.*—A testator gave the residue of his estate to trustees upon trust to pay the income thereof "for the maintenance, support, or education, or otherwise for the benefit of blind persons resident in Newcastle-on-Tyne, . . . but so that the payment of such income shall not take away or weaken the self-respect of the recipient."

HELD—that the intention must be taken to have been the relief of distress, and that the legacy was a good charitable gift.

*In re Fraser, Yates v. Fraser* ((1883) 22 Ch. D. 827) and *In re Dudgeon, Truman v. Pope* ((1896) 74 L. T. 613) followed.

IN RE ELLIOTT, RAVEN *v.* NICHOLSON, [1910] [W. N. 106; 102 L. T. 528; 54 Sol. Jo. 426—Parker, J.]

11. *Exemption from Legacy Duty in Ireland—Propaganda—Stamp Duties (Ireland) Act, 1842* (5 & 6 Vict. c. 82), s. 38.]—A testatrix by her will left a legacy to the Irish Church Mission, a mission whose object was admitted to be the conversion of Roman Catholics to the Protestant faith.

HELD—that this was a good charitable bequest, and therefore exempt from legacy duty under sect. 38 of the Stamp Duties (Ireland) Act, 1842.

ATTORNEY-GENERAL FOR IRELAND *v.* BECHER, [1910] 2 I. R. 251; 44 I. L. T. 67—Div. Ct., Ireland.

12. *Charitable Object—Carried on by One Man—No Regular Organisation.*—The fact that an otherwise charitable object is being carried on by one man without any regular organisation does not make the object non-charitable.

IN RE MARCHANT, WEAVER *v.* ROYAL SOCIETY [FOR THE PREVENTION OF CRUELTY TO ANIMALS, 54 Sol. Jo. 425—Parker, J.]

13. *Bequests in Trust for Purposes of "Healthy Recreation"—Singing Classes—Musical Instruments.*—A testator directed his trustees to apply the residue of his estate "for the purpose of fostering, encouraging and providing the means of obtaining healthy recreation, including the teaching of singing in classes or choruses, for the residents of Portadown and the surrounding districts, and for the purpose of providing music and instruments (in so far as my trustees think advisable) for the town band in such manner and form as my trustees shall in their absolute discretion consider best, but in no case shall my trustees pay any moneys derived out of my estate for prizes for football or rowing for speed." There were other indications in the will of a public charitable intention:—

HELD—that the above direction constituted a valid charitable gift for the benefit of the

inhabitants of Portadown and its immediate neighbourhood.

IN RE WATSON, SHILLINGTON *v.* PORTADOWN [URBAN DISTRICT COUNCIL, 41 I. L. T. 200—Barton, J., Ireland.]

## (b) Mortmain Acts.

14. *Technical School—Gift by Deed—Death of Donor within Twelve Months—Equitable Devise—Mortmain and Charitable Uses Act, 1888* (51 & 52 Vict. c. 42)—*Technical and Industrial Institutions Act, 1892* (55 & 56 Vict. c. 29), ss. 2, 6, 10.]—By his will dated March, 1908, the testator, by clause 2, gave all his real and personal estate, with certain exceptions, to his executors upon the trusts thereafter declared, and by clause 5, after referring to a technical trade school which the testator had erected on his freehold land, and which he intended to endow, he directed his executors, in case he might not have executed a good conveyance of the school and premises, and of other real and personal property, by reason of his death within twelve months from its execution, to execute and enrol a conveyance. By deed dated October 20th, 1908, and duly enrolled, the testator conveyed to a trustee the freehold lands and buildings described in the first schedule thereto, upon trusts therein declared, for the maintenance of the school and the education of the scholars. Part I. of the first schedule comprised the site of the school; Part II. comprised freehold ground-rents as an endowment for the school; and Part III. comprised the freehold residence of the testator. The testator died in August, 1909.

HELD—that the site of the school described in Part I. of the schedule to the deed of October 20th, 1908, passed by that deed by virtue of the provisions of the Technical and Industrial Institutions Act, 1892, that the remainder of the property described in Parts II. and III. of the schedule to the deed passed under the testator's will to the executors, and that clause 5 of the will operated as a good equitable devise of that property to charitable uses.

IN RE STANLEY'S TRUST DEED, STANLEY [v. ATTORNEY-GENERAL, 26 T. L. R. 365—Neville, J.]

15. *Bequest by English Testator of Mortgages on Real Estate in Ontario—Validity—Charitable Uses Act, 1736* (9 Geo. 2, c. 36).]—A bequest to charity by a person domiciled in England of mortgages in fee on land in Ontario, being a disposition by will of an interest in land in Ontario forbidden by the law of that province, is invalid.

Decision of Eady, J. ([1910] 2 Ch. 333; 79 L. J. Ch. 720; 103 L. T. 127; 26 T. L. R. 516; 54 Sol. Jo. 582) affirmed.

IN RE HOYLES, ROW *v.* JAGG, [1910] W. N. 275; [27 T. L. R. 131—C. A.]

16. *Land Conveyed to Testator for Charitable Purposes—Deed not enrolled—Bequest of Land—Administration.*—A convalescent home, consisting of two freehold houses, was founded by



**11. Charitable Gifts—Continued.**

the testator, who purchased the houses out of moneys collected by him or legacies left to him for the general purposes of the home. The houses were conveyed to him in his own name, and the conveyances were not enrolled in accordance with the provisions of the Mortmain Act. By his will, after appointing the plaintiffs his executors, he left the houses constituting the home to his wife, to be conducted as a home, and he appointed her manager, treasurer, and secretary of the home. By a codicil to his will, the testator appointed certain persons to be trustees of the home.

**HELD**—that the interest of the testator in the home at the time of his death was that of a trustee only, and passed upon his death to the plaintiffs as his executors, and that a scheme should be settled for the administration of the home.

**IN RE FORBES, FORBES v. FORBES**, 27 T. L. R. 27—Neville, J.

**(c) Uncertainty.**

**17. Trust for—“Civil or Religious Purposes.”**—A trust “for such purposes civil or religious” as the trustees shall appoint fails as a charitable trust by reason of its uncertainty, even though the trustees are and must be members of a particular religious body.

**IN RE FRIENDS’ FREE SCHOOL, CLIBBORN v. O’BRIEN**, [1909] 2 Ch. 675; 79 L. J. Ch. 5; 101 L. T. 204; 25 T. L. R. 782; 53 Sol. Jo. 733—Eve, J.

**CHARTERPARTY.**

See SHIPPING AND NAVIGATION.

**CHEQUES.**

See BANKERS AND BANKING; CONFLICT OF LAWS.

**CHILDREN.**

See BASTARDY; CRIMINAL LAW AND PROCEDURE; EDUCATION; FACTORIES AND WORKSHOPS; INFANTS.

**CHOSSES IN ACTION.**

See also SET-OFF, No. 1.

**1. Assignment of Debt—Ascertained Sum—Portion of Existing Debt—Judicature Act, 1873** (36 & 37 Vict. c. 66), s. 25 (6).—Under sect. 25 (6) of the Judicature Act, 1873, an ascertained

portion of an existing debt may legally be assigned.

**SKIPPER AND TUCKER v. HOLLOWAY AND HOWARD**, [1909] 2 K. B. 630; 79 L. J. K. B. 91; 26 T. L. R. 82—Darling, J.

On appeal, decision of Darling, J., reversed on the ground that there was no existing debt at the date of the supposed assignment ([1910] 2 K. B. 635, n.; 79 L. J. K. B. 496; 26 T. L. R. 357)—C. A.

**2. Assignment of Debt—Portion of Judgment Debt—Right of Assignee to Issue Execution.**—The assignee of part of a judgment debt cannot issue execution thereon.

Appeal from **Bray, J.** (*infra*) dismissed.

**FORSTER v. BAKER**, [1910] 2 K. B. 636; 79 [L. J. K. B. 664; 102 L. T. 522; 26 T. L. R. 421—C. A.

**3. Assignment of Debt—Portion of Judgment Debt—Validity of Assignment—Judicature Act, 1873** (36 & 37 Vict. c. 66), s. 25 (6).—Under sect. 25, (6) of the Judicature Act, 1873, there cannot be a valid assignment of a part of a debt or legal chose in action.

*Skipper and Tucker v. Holloway and Howard* (*supra*)—Darling, J.) not followed.

**FORSTER v. BAKER**, [1910] 2 K. B. 636; 79 [L. J. K. B. 664; 102 L. T. 29; *sub nom.*

**BOWLES v. BAKER**, 26 T. L. R. 243—Bray, J.  
See S. C., on appeal, *supra*.

**CHURCHES, CHURCH-  
WARDENS, AND CLERGY.**

See ECCLESIASTICAL LAW.

**CHURCHYARD.**

See BURIAL AND CREMATION.

**CLEARING HOUSE.**

See BANKERS.

**CLERK OF THE PEACE.**

See PUBLIC OFFICERS.

**CLUBS.**

See also INTOXICATING LIQUORS.

**1. Licensing—Club—Power to Strike Off the Register—Occupation of Premises Formerly**



**Clubs Continued.**

*Licensed*—"Refusal" to Renew Licence within Twelve Months Preceding Formation of Club—*Provisional Licence*—*Licensing Act, 1902* (2 Edw. 7, c. 28), s. 28 (1) (*f*)—*Licensing Rules, 1904*, rr. 41, 43.]—Sect. 28 (1) (*f*) of the Licensing Act, 1902, provides that a club may be struck off the register on the ground that it occupies premises in respect of which, within twelve months next preceding the formation of the club, the renewal of the licence has been refused.

**HELD**—that the period of twelve months mentioned in this enactment runs from the date of the refusal of the compensation authority to renew the licence, and not from the date of the expiry of a provisional licence granted by them under rules 41 and 43 of the Licensing Rules, 1904, pending the determination of the amount of compensation payable.

**PLAISTOW WORKING MEN'S CLUB AND INSTITUTE AND ANOTHER v. HARROD, [1910] 1 K. B. 582; 79 L. J. K. B. 654; 102 L. T. 20; 74 J. P. 100; 26 T. L. R. 216—Div. Ct.**

**COAL.**

See **MINES.**

**COINS AND COINAGE.**

See **CRIMINAL LAW.**

**COLLECTING SOCIETIES.**

See **INDUSTRIAL SOCIETIES.**

**COLLEGES.**

See **CHARITIES; EDUCATION.**

**COLLISIONS AT SEA.**

See **SHIPPING AND NAVIGATION.**

**COMBINATIONS AFFECTING TRADE.**

See **TRADE AND TRADE UNIONS.**

**COMMISSION.**

See **AGENCY; COMPANIES; STOCK EXCHANGE.**

**COMMISSION TO EXAMINE WITNESSES.**

See **EVIDENCE; PRACTICE AND PROCEDURE.**

**COMMONS.**

1. *Lands taken for Public Undertaking—Compensation for Extinguishment of Commonable Rights—Payment of Compensation to Committee—Jurisdiction of Board of Agriculture as to Constitution of Committee—Lands Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 18), ss. 102, 103—*Inclosure Acts, 1852* (15 & 16 Vict. c. 79), s. 22, and 1854 (17 & 18 Vict. c. 97)—*Commonable Rights Compensation Act, 1882* (45 & 46 Vict. c. 15).]—Where persons have in their hands as a *de facto* committee under the Lands Clauses Consolidation Act, 1845, money representing compensation paid in respect of the extinction of commonable rights, the jurisdiction of the Board of Agriculture under the Inclosure Acts, 1852 and 1854, and the Commonable Rights Compensation Act, 1882, to make orders for the disposal of the money arises on an application by such committee to the Board to take action under sect. 22 of the Inclosure Act, 1852, and the Board need not inquire into the question of any defect in the constitution of the committee.

**SALMON AND ANOTHER v. EDWARDS AND [OTHERS, [1910] 1 Ch. 552; 79 L. J. Ch. 296; 102 L. T. 456; 74 J. P. 177; 26 T. L. R. 325; 54 Sol. Jo. 406; 8 L. G. R. 405—Warrington, J.**

2. *Conservators of Common—Duty—Quarrying—Commonable Rights—Open Space—Disfigurement—47 & 48 Vict. c. clxxv. s. 25.*]—By the Malvern Hills Act, 1884 (47 & 48 Vict. c. clxxv.), conservators are appointed, the lands subject to the Act are to be preserved as open spaces, any unlawful digging is to be prevented, and new quarries are to be so placed as to cause as little injury and disfigurement to the hills as reasonably practicable.

The lord of a manor in working a quarry placed it so as to cause as little disfigurement to the hills as reasonably practicable. The spoil-banks were made parallel to the quarry, and were raked down so as to admit their being sown on.

**HELD**—that there had been no disfigurement, and that the lord of a manor to whom the soil belongs, has a right to dig for gravel and sand, and to quarry for stone and minerals which lie under the waste for his own profit, as long as he does not materially deprive the commoners of commonable rights.

**MALVERN HILLS CONSERVATORS v. WHITMORE, 100 L. T. 841; 73 J. P. 329; 8 L. G. R. 179—Eady, J.**

3. *Commonable Animals—Sheep—Duty of Adjoining Owner to Maintain Fence to Keep Out Commonable Animals.*]—The owner of land adjoining a common is only bound to maintain

**Commons—Continued.**

fences which are sufficient to keep out the ordinary commonable animals. He is not bound to fence against animals of a recently introduced breed which are of a peculiarly wandering disposition or specially addicted to jumping.

COAKER *v.* WILLCOCKS, 27 T. L. R. 137; 55  
[Sol. Jo. 155—Div. Ct.]

## COMMONWEALTH OF AUSTRALIA.

*See* DEPENDENCIES AND COLONIES.

## COMMUTATION OF TITHES.

*See* ECCLESIASTICAL LAW.

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See also FRIENDLY SOCIETIES, Nos. 4, 5, 6; INCOME TAX, No. 4; LANDLORD AND TENANT, No. 24; TRUSTS, Nos. 3, 8.

## I. AMALGAMATION.

See also XXVII., *infra*.

1. *Arrangement between Company and its Members—Jurisdiction to Order Meeting—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 120.]—A petition was presented in the name of a company, but admittedly really by the directors thereof, for authority under sect. 120 of the Companies (Consolidation) Act, 1908, to call and hold meetings to consider, and if so resolved approve of, a scheme of arrangement whereby the company would be absorbed in another company, and finally for sanction of the scheme.

HELD—that the petition was premature, because before a meeting could be ordered under sect. 120 the Court must have before them an arrangement or proposed arrangement between the company and its members, and be asked by the company or by its members to

interfere for the purpose of calling a meeting, and that neither of these conditions was satisfied, because the directors were not entitled to speak for the company in this matter, amalgamation not being an ordinary purpose of management.

DAILUAINÉ-TALISKER DISTILLERIES, LD. v. [MACKENZIE, [1910] S. C. 913; 47 Sc. L. R. 717—Ct. of Sess.]

## II. ARTICLES OF ASSOCIATION.

## (a) General.

[No paragraphs in this vol. of the Digest.]

## (b) Alteration.

See Nos. 4, 42, 46, *infra*.

## III. ASSOCIATIONS NOT FOR PROFIT.

2. *Memorandum—Power to Pension Secretary.*

—The memorandum of association of a club which was incorporated under the Companies Acts, but not for the purposes of gain, provided that the club's income and property should be applied solely towards the promotion of the objects of the club as set forth, and no portion thereof was to be "paid or transferred directly or indirectly by way of dividend, bonus, or otherwise howsoever by way of profit to the members of the club. Provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officers or servants of the club, or to any member of the club or other person in return for any services actually rendered to the club."

HELD—that a payment to a retired secretary and member of the club by way of annuity, pension, or gratuity was within the powers of the club as being in furtherance of its objects and interests.

CYCLISTS' TOURING CLUB v. HOPKINSON, [1910]

[1 Ch. 179; 79 L. J. Ch. 82; 101 L. T. 848; 26 T. L. R. 117; 54 Sol. Jo. 134; 17 Manson, 10—Eady, J.]

## IV. AUDITORS.

3. *Winding-up—Production of Documents—Lien—"Officer"—Right to Retain Books Belonging to Company—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), ss. 164, 174, 193.]—The liquidator of a company which was being wound up voluntarily claimed delivery of certain books and papers belonging to the company which had been placed in an accountant's hands to write up the books and to prepare a balance-sheet. The accountant having refused to hand them over unless the liquidator either paid his fees or recognised his lien therefor, the liquidator presented a petition to the Court under sects. 164, 174, and 193 of the Companies (Consolidation) Act, 1908, for their delivery, but that "without prejudice" to any right of lien competent to the respondent.

HELD—that while delivery without prejudice to an alleged right of lien did not involve its admission, it did not in any way prejudice it if it existed, and that as delivery of the books was necessary for liquidation purposes the petitioner was entitled to the delivery craved.

Opinion—that the respondent had a good right

#### IV. Auditors—Continued.

of retention on the ground of implied contract, though not a good right of lien properly so called.

Opinion (*per* Lord Johnston)—that an auditor is not an "officer" of a company within the meaning of sect. 164 of the Companies (Consolidation) Act, 1908.

FINDLAY (LIQUIDATOR OF SCOTTISH WORK-  
[MEN'S ASSURANCE CO., LD.] *v.* WADDELL,  
[1910] S. C. 670; 47 Sc. L. R. 478—Ct. of  
Sess.

#### V. BORROWING.

*See* No. 55, *infra*.

#### VI. CAPITAL.

*See also* REVENUE, No. 10.

4. *Increase—Resolution Empowering Directors to Increase Capital—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 12.]—Articles of association provided (article 53) that "the company in general meeting may from time to time . . . increase its capital by the creation of new shares." Article 59 provided that "any new shares from time to time to be created may from time to time be issued with any such guarantee or any such right of preference . . . over any other shares previously issued . . . or at such a premium, or with such deferred rights, as compared with any shares previously issued or then about to be issued, or subject to any such conditions or provisions, and with any such right, or without any right, of voting, and generally on such terms as the company may from time to time by resolution of a general meeting declare." At extraordinary general meetings of the company the company passed and confirmed certain special resolutions, among them one substituting the words "by resolution of the directors" for the words "in general meeting" in article 53. Subsequently the directors passed a resolution to increase the company's capital by the creation of 125,000 new shares of £1 each.

HELD—that, even assuming that the resolution of the directors to increase the capital by the creation of new shares was *intra vires*, those shares could not be issued without the sanction of a resolution of a general meeting of the company as required by article 59.

HELD, further, that the plaintiff, who was a shareholder of the company and a former director, was not precluded from obtaining an injunction restraining the company from issuing the new shares without the sanction of a resolution of a general meeting by the fact that he had been a party to the passing of the resolutions which authorised the increase of capital and had taken shares issued under earlier resolutions.

*Towers v. African Tug Co.* ([1904] 1 Ch. 558) distinguished.

Decision of *Eve, J.* ([1910] 2 Ch. 382; 79 L. J. Ch. 647; 103 L. T. 139; 26 T. L. R. 585; 54 Sol. Jo. 652) reversed.

MOSELY *v.* KOFFYFONTEIN MINES, LD.,  
[1911] 1 Ch. 73; [1910] W. N. 231; 103 L. T.  
616; 27 T. L. R. 61; 55 Sol. Jo. 44—C. A.

#### VII. COMMISSION ON ACCEPTANCE OF SHARES.

[No paragraphs in this vol. of the Digest.]

#### VIII. CONTRACTS.

##### (a) Pre-incorporation Contracts.

[No paragraphs in this vol. of the Digest.]

##### (b) Provisional Contracts.

[No paragraphs in this vol. of the Digest.]

##### (c) Ultra Vires.

*See also* Nos. 8, 17, *infra*.

5. *Railway Company—Agreement—Supply of Drinking Water—Construction.*]—A railway company agreed to supply an hotel with a good and adequate supply of water fit for drinking purposes as far as was practicable from the springs in their tunnel. The water was liable to be contaminated, and the plaintiff brought his action insisting that he was entitled to a proper supply of drinking water.

HELD—that the railway company had carried out their contract, which was simply to supply surface water, which would otherwise run to waste, and that an agreement to supply drinking water and lay pipes and mains for all time would be *ultra vires*.

WILSON *v.* GREAT WESTERN RY. CO., 128  
[L. T. Jo. 340—Eady, J.]

#### IX. DEBENTURES.

*See also* INTOXICATING LIQUORS, No. 4;  
SOLICITORS, Nos. 3, 17.

##### (a) General.

6. *Cheque in Payment of Interest—Failure to present Cheque—Release of Security.*]—The mere acceptance of a cheque in payment of interest on debentures, and failure to present the cheque for payment, do not constitute a release of the security.

IN RE DEFRIES & SONS, EICHHOLZ *v.* THE  
COMPANY, [1909] 2 Ch. 423; 78 L. J. Ch. 720;  
101 L. T. 486; 25 T. L. R. 752; 53 Sol. Jo.  
697; 16 Manson, 308—Warrington, J.

7. *Interest Out of Net Profits—Reserve Fund—Carrying Forward Balance—Injunction.*]—A company issued debenture stock, the interest on which was to be paid out of the net earnings of the company. The company proposed to set aside a sum out of the net earnings as a reserve, and not to pay the full interest on the debenture stock.

HELD—that the company were only entitled to set aside so much of the sum as was required for the maintenance of the security, and that the balance ought to be distributed among the debenture stock holders.

HESLOP *v.* PARAGUAY CENTRAL RY. CO., LD.,  
[54 Sol. Jo. 234—Eve, J.]

8. *Chartered Company—Mortgage—Land Situated Abroad—Exclusive Licence—Clog on Equity of Redemption.*]—The plaintiffs, a chartered company, contracted, "in considera-



IX. **Debentures—Continued.**

tion of the assistance rendered and to be rendered" by the defendants, to grant to the defendants an exclusive licence to work all diamondiferous mines in the plaintiffs' territories, which were in South Africa, and which were, as to part, governed by English law, and as to part, by Roman-Dutch law. At that date the plaintiffs owed the defendants £112,000, and it was agreed that in lieu of repayment of this, and a proposed further advance of £100,000, debentures should be issued as a floating charge on all the plaintiffs' property. These debentures were issued, but had all long ago been redeemed. On an application by the plaintiffs to have it declared that the agreement purporting to grant an exclusive licence was void :—

HELD, that the proper law of the contract was English, that the agreement to grant the exclusive licence was part of the mortgage transaction under which the debentures were issued to the defendants, and that it was invalid as being a clog on the equity of redemption.

Decision of Eady, J. ([1910] 1 Ch. 354; 79 L. J. Ch. 345; 102 L. T. 95; 26 T. L. R. 285; 54 Sol. Jo. 289; 17 Manson, 190) affirmed.

BRITISH SOUTH AFRICA CO. v. DE BEERS [CONSOLIDATED MINES, LD., [1910] 2 Ch. 502; 103 L. T. 4; 26 T. L. R. 591; 54 Sol. Jo. 679—C. A.

9. *Debentures Guaranteed—Winding-up of Guarantor Society—Release of Guarantor—“Arrangement or Compromise”—Power of Majority of Debenture-Holders to Bind Minority.*—A trust deed securing debentures of the defendant company provided that they should be guaranteed by the L. G. A. and T. Society, Ltd., the society being trustee for the debenture-holders. It also provided that a general meeting of debenture-holders should have power by extraordinary resolution to assent to any arrangement or compromise proposed to be made between the company and the debenture-holders if it were such as the Court would have jurisdiction to sanction if the company were being wound up and the requisite majority of the debenture-holders had agreed to it. The L. G. A. and T. Society being now in the course of voluntary winding-up under supervision, the debenture-holders at duly held meetings passed by the requisite majority resolutions releasing the L. G. A. and T. Society, appointing new trustees, increasing the interest on the debentures and discontinuing a sinking fund established under the deed.

HELD—that the resolutions were valid and binding on all the debenture-holders, as being for an arrangement or compromise such as the Court had jurisdiction to sanction in a winding-up.

SHAW v. ROYCE, LD., [1911] 1 Ch. 138; [1910] [W. N. 251; 45 L. J. N. C. 759—Warrington, J.

(b) **Debenture-holders' Action.**

See also Nos. 37, 38, 40, *infra*.

10. *Payment out of Court of Sum Recovered—Pending Claims by Company against the Plain-*

*tiff—Sum Due to Plaintiff Carried to Separate Account and not Paid Out.*—A debenture-holder who was the original plaintiff in a debenture-holder's action was also a trustee for the debenture-holders and, as well, a director of the company. The sum recovered in the action had been paid into Court, and in paying it out to the debenture-holders it was proposed to except, and carry to a separate account, the sum due to the original plaintiff on the ground that the company had certain claims against him which were still pending.

HELD—that it would not be right for the Court in administering the fund in the debenture-holder's action to part with a share in it to the former plaintiff, or his assignees, until the rights as between him and the company had been ascertained, and that his share of the fund must therefore be carried over to a separate account.

IN RE RHODESIA GOLDFIELDS, LD., PARTRIDGE [v. RHODESIA GOLDFIELDS, LD., [1910] 1 Ch. 239; 79 L. J. Ch. 133; 102 L. T. 126; 54 Sol. Jo. 135; 17 Manson, 23—Eady, J.

11. *Receiver—Debt for Gas Supplied Before Receiver's Appointment—Distress Warrant of Justices—Priority of Gas Company over Debenture-holders—The Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), s. 23—The South Staffordshire Mond Gas (Power and Heating) Company's Act, 1901 (1 Edw. 7, c. cxxli), s. 74.*—At the date when a receiver was appointed in a debenture-holders' action against a company, the company owed a sum of money to a gas company for gas supplied, which the receiver refused to pay. The debentures were not secured by a trust deed and operated only as an equitable charge on the company's property and assets. The gas company obtained, under sect. 23 of the Gasworks Clauses Act, 1871, and sect. 74 of their special Act (which provided that sums payable to the company might be recovered summarily or by action), an order and warrant from justices empowering them to levy a distress on the company's goods and chattels for the amount of the debt, and then applied in the debenture-holders' action for leave to proceed with the distress.

HELD—that the statutory rights of the gas company overrode the equitable rights of the debenture-holders, and leave was granted them to proceed with the distress.

IN RE ADOLPHE CROSBIE, LD., JOHNSON AND [HUGHES v. ADOLPHE CROSBIE, LD., 74 J. P. 25; 8 L. G. R. 50—Neville, J.

12. *Practice—Short Cause—Motion for Judgment—No Appearance by Company—Affidavit Evidence—R. S. C., Ord. 40, r. 2.*—In an action against the K. company by a debenture-holder, an order was made on his motion for a receiver and manager. The company appeared by counsel and refused to treat the motion as the trial of the action or to consent to judgment. Subsequently on a summons for directions which the company did not attend the master declined to allow pleadings, and ordered the case to be set down on motion for judgment as a short cause without pleadings. The company did not appear



### IX. Debentures—Continued.

on the motion, and the only evidence before the judge was the affidavit in support of the motion for a receiver, but leave was given to file another affidavit to prove a resolution for voluntary liquidation and the appointment of the liquidator. Later, the judge made an order for accounts and inquiries, but declined to make, without evidence, a declaration that the debenture-holders were entitled to a charge, and said that in such cases orders ought not to be made by the master unless the company appeared before the master and stated their willingness to appear by counsel at the hearing before the judge, and to consent to the order; and that in that case, if neither party objected, it might be proper to give liberty to prove the facts by evidence on affidavit.

IN RE KITSON EMPIRE LIGHTING CO., LD.,  
[HIGGS v. THE COMPANY, [1910] W. N. 154;  
45 L. J. N. C. 390; 129 L. T. Jo. 133—  
Parker, J.]

#### (c) Floating Security.

See Nos. 13, 14, 15, *infra*.

#### (d) Priority.

See also No. 37, *infra*.

**13. Debentures Charged on all Future Property—Floating Charge—Subsequent Specific Legal Mortgage—Unpaid Vendor—Variation between Debentures and Trust Deed—Cumulative Protection—Registration of Debentures—Notice—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14.**—In 1901 a company by a trust deed conveyed and assigned all its property present and future to secure certain debentures, and it was provided that such trust deed was to operate as a floating security and so that the company should not be at liberty to create any charge in priority to, or *pari passu* with, the security of the debenture-holders. The debentures themselves, however, provided that they were not to operate so as to prevent the company specifically charging any freehold, leasehold or copyhold property subsequently acquired in priority to the debentures. The particulars of the debenture charge required by sect. 14 of the Companies Act, 1900, were duly registered. In 1904 certain freehold hereditaments were conveyed to the company. In 1905 the premises were reconveyed to the vendors by way of mortgage to secure the unpaid balance of the purchase-money. In 1906 the company mortgaged their equity of redemption in the premises to the plaintiff. In 1909 the plaintiff took a transfer of the first mortgage.

**HELD**—(1) that the first mortgage, being given to secure the paramount equity of the vendor mortgagees to their unpaid purchase-money, took priority over the debenture charge; that it was immaterial whether or not the vendor mortgagees had notice of the debenture charge; that on the evidence they had no actual notice; that the particulars registered under the Companies Act, 1900, s. 14, amounted to constructive notice, but only of the fact that there was a floating charge permitting the usual dealings with property. (2) That the second

mortgage must be postponed to the security of the debenture-holders, as they were protected by the prohibition in the debenture deed against the charging of subsequently-acquired property in priority, despite the permission given by the debentures themselves.

WILSON v. KELLAND, [1910] 2 Ch. 306; 79 [L. J. Ch. 580; 103 L. T. 17; 26 T. L. R. 485; 54 Sol. Jo. 542; 17 Manson, 233—Eve, J.]

**14. Garnishee Order Nisi—Notice by Debenture-holder—No Appointment of Receiver.**—The plaintiff, a creditor of the defendant company, having obtained judgment against them, obtained on April 24th, 1909, a garnishee order nisi against the company's bankers attaching the sum of £61. On May 14th following the claimant, who was a debenture-holder of the defendant company, and who had given them notice to pay off the debenture, gave notice to the plaintiff, the company, and the bank, claiming to be entitled to the sum which the plaintiff had garnisheed. The claimant did not, however, obtain the appointment of a receiver or take any other step to enforce his security.

**HELD**—that the plaintiff was entitled to have the garnishee order nisi made absolute.

EVANS v. RIVAL GRANITE QUARRY CO., LD.,  
[NORTH AND SOUTH WALES BANK, LD.,  
GARNISHEES: PITMAN, CLAIMANT, [1910] 2  
K. B. 979; 79 L. J. K. B. 970; 26 T. L. R.  
509; 54 Sol. Jo. 580—C. A.]

**15. Clause Restricting Pledges and Mortgages—Sale or Pledge—Collateral Guarantee—Power to Redeem Goods Disposed of—Power to Require Company to Redeem—“Ordinary Course of Business.”**—P. & Co., Ltd., pot-still whiskey distillers, issued debentures secured by a trust deed which contained a clause making the debentures a floating charge on the assets and undertaking of the company, and providing (*inter alia*) that they should not prevent the company from disposing of or dealing with such assets in the ordinary course of business, and for the purpose of carrying on the same, but that the company should not create any mortgage or charge ranking in priority to or *pari passu* with the debenture stock. From time to time the company disposed of raw pot-still whiskey to one C. The transactions, of which there were six prior to March, 1906, were treated as sales in the company's books, and C. paid to the company the full market price for the whiskey. In the case of each lot of whiskey, the company gave to C. a collateral guarantee in the form of a deed poll, in which the whiskey was referred to as “assigned or pledged,” the company undertaking the burden of custody, storage, and insurance, and the whiskey remaining in the company's bonded warehouse; but being transferred in the Excise books into C.'s name. The guarantee contained the following words: “we may or will redeem or repurchase the said whiskey in four years at a profit to you of 10 per cent., simple interest on the price paid.” In March, 1906, C. received notice of the debentures and of the restrictive clause in the trust deed. Thereafter the company disposed of other lots of whiskey to C., accom-

### IX. Debentures—Continued.

panied by a new form of guarantee agreement in which the references to pledge and redemption were struck out, and it was made clear that the whiskey was to be the property of C., and that the company could not insist on a repurchase, but that C. had an option to require the company to repurchase after the expiration of four years. The agreements were framed under legal advice so as to constitute sales, and to transfer the property in the whiskey to C.

**HELD**—that the transactions with C. prior to March, 1906, were not sales, but pledges or mortgages; but that the transactions after March, 1906, were sales and not pledges, nor mortgages in disguise, but were sales.

*Yorkshire Railway Wagon Co. v. Maclure* ((1882) 21 Ch. D. 309) applied.

**HELD**—also, that they were transactions "in the ordinary course of the company's business" within the meaning of the debenture trust deed.

*COVENEY v. PERSSE*, [1910] 1 I. R. 194—C. A., [Ireland.

#### (e) Registration.

*See* No. 13, *supra*.

#### (f) Validity.

*See* No. 63, *infra*.

### X. DEEDS OF ARRANGEMENT.

*See* No. 1, *supra*.

### XI. DEFUNCT COMPANY.

[No paragraphs in this vol. of the Digest.]

### XII. DIRECTORS.

*See also* Nos. 60, 62, *infra*.

#### (a) General.

**16. Director Interested in Shares—Forfeiture for Non-payment of Calls—Notice.**—A director of a company, who has been a director from the foundation of the company, and has taken an active part in the management, and was himself present at a meeting of the directors at which a resolution was passed declaring certain shares, in which he was beneficially interested, forfeited for non-payment of calls, and himself supported such resolution, will not be allowed to set up that the directors were illegally appointed, so that everything done by them was void *ab initio*, or that notice of his own acts was not legally served upon him.

Decision of the Supreme Court of British Columbia affirmed.

*JONES v. NORTH VANCOUVER LAND AND IMPROVEMENT CO.*, 79 L. J. P. C. 89; 102 L. T. 377; 47 Sc. L. R. 896—P. C.

**17. Contract by Company to Manage Real Estates—Appointment of its own Directors as Agents—Rights of Directors to Make a Profit out of the Contract—Articles of Association—**

*Fiduciary Position—Directors as Trustees.*—The doctrine that a trustee shall not make a profit out of his *cestui que trust* beyond the amount agreed under the contract applies to the directors of a company as much as to a private individual. The fact that a company's articles of association allows contracts between the directors and members of the company has no bearing upon dealings between the company and the outside world. A company agreed with B. to manage certain of his estates on the terms (*inter alia*) that the company might advance moneys for the improvement thereof, and incur any costs, charges, and expenses necessary and proper, charging 6 per cent. interest thereon. The directors of the company appointed by resolution four members of the board to act as solicitor, manager, auctioneer, and accountant respectively in connection with the estates, and paid them accordingly. The company's articles of association provided that contracts would be made between the board and the members in respect of the business of the company.

**HELD**—that in taking accounts between B. and the company, the latter were not entitled to charge against B. amounts so paid to the directors for their services in the management of the estates.

*Kavanagh v. Workingman's Benefit Building Society* ([1896] 1 I. R. 56) approved.

*BATH v. STANDARD LAND CO., LD.*, [1910] 2 Ch. 408; 80 L. J. Ch. 36; 103 L. T. 498—Neville, J.

#### (b) Appointment.

**18. Notice Convening Meeting—Nature of Business to be Transacted—No Mention of Additional Directors—Sufficiency of Notice.**—The articles of association of a company provided that the notice of a general meeting should specify the general nature of the special business to be transacted. Notice was given of a meeting for the purpose of passing a resolution that three retiring directors whose term of office had expired should be re-elected, with such amendments as should be determined at the meeting. At the meeting an amendment to the resolution was carried appointing two additional directors.

**HELD**—that the notice sufficiently indicated the business transacted, and that therefore the additional directors were duly appointed.

*BETTS & CO., LD. v. MACNAGHTEN*, [1910] 1 Ch. 430; 79 L. J. Ch. 207; 100 L. T. 922; 25 T. L. R. 552; 53 Sol. Jo. 521; 17 Manson, 71—Eve, J.

#### (c) Fiduciary Relation.

**19. Agreement Not to Carry on Business in Competition with Company—Company in Liquidation—Breach of Agreement—Taking Lists of Company's Customers.**—The defendant agreed to become managing director of a company for seven years at a specified salary, and he covenanted that he would not while holding office as director or within seven years after ceasing to hold such office, carry on any business in competition with that carried on by the company. While the defendant held office as director an order for the

## XII. Directors—Continued.

compulsory winding up of the company was made, and thereupon the defendant started a competing business, having previously obtained from the company's books lists of their customers. In an action by the company in liquidation to restrain the defendant from carrying on such competing business, and for delivery up of all lists of the names and addresses of the company's customers copied or extracted from their books :

HELD, by Joyce, J. ([1910] 1 Ch. 336; 102 L. T. 7; 26 T. L. R. 251; 54 Sol. Jo. 249)—(1) that the plaintiff company were entitled to delivery up of such lists of the names and addresses of their customers; but (2) that the winding-up order operated as a discharge or dismissal of the defendant as director of the company, and that therefore the defendant was no longer bound by the covenant not to carry on business in competition with the company.

*General Bill Posting Co. v. Atkinson* ([1909] A. C. 118) applied.

On appeal by the company from the refusal to grant an injunction :—

HELD (Buckley, L.J., dissenting)—that as the company could not allege and prove that they had performed their part of the bargain and were ready also to perform it in the future, they were not entitled to an injunction.

Decision of Joyce, J. (*supra*) affirmed.

MEASURES BROTHERS, LD. *v.* MEASURES, [1910] 2 Ch. 248; 102 L. T. 794; 26 T. L. R. 488; 54 Sol. Jo. 521—C. A.

### (d) Misfeasance.

20. *Duty—Liability—Adopting and Carrying out Contract—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 215.]—A director's duty requires him to act with such care as is reasonably to be expected from him, having regard to his knowledge and experience. He is not bound to bring any special qualifications to his office, but if he is acquainted with the particular business carried on by the company he must give the company the advantage of his knowledge when transacting the company's business. He is not bound to take any definite part in the conduct of the company's business, but so far as he does undertake it he must use reasonable care in its despatch. Such reasonable care must be measured by the care an ordinary man might be expected to take in the same circumstances on his own behalf. He is not responsible for damages occasioned by errors of judgment. Where the company of which he is a director has been formed for the purpose of carrying out a contract, but a discretion is left to the directors by the articles, the directors are bound to exercise their discretion with regard to adopting the contract.

One of the articles of association of a company provided that :—"No director shall be liable . . . for any loss, damage, or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto unless the same happen through his own dishonesty."

HELD—that it was not illegal for the company to engage its directors upon such

terms, and that the article was intended to relieve the directors, who acted honestly from liability for damages occasioned even by their negligence, where such negligence was not dishonest.

The words "breach of trust" in sect. 215 of the Companies (Consolidation) Act, 1908, are intended to include breach of duty.

IN RE BRAZILIAN RUBBER PLANTATIONS AND ESTATES, LD., 27 T. L. R. 109—Neville, J.

### (e) Prospectus.

[No paragraphs in this vol. of the Digest.]

### (f) Powers.

See also No. 4, *supra*.

21. *Company—Exchange of Shares for Debentures—Issue of Shares to procure Votes at Pending Meeting.*]—The directors of a company proposed to issue certain shares in exchange for debentures. B. (one of the directors) dissented from the proposal, alleging that the intention was to procure votes at a pending meeting, and to obtain control of the company's management. The company and B., having brought an action to restrain the other directors from issuing shares in exchange for debentures, now applied for an interlocutory injunction.

HELD—that the circumstances were not such as to warrant the granting of an interlocutory injunction.

*Punt v. Symons* ([1903] 2 Ch. 506) distinguished.

ABBOTSFORD HOTEL, LD. *v.* KINGHAM, 101 [L. T. 777—Joyce, J.]

Affirmed on appeal, B. having in the meanwhile acquired debentures sufficient to prevent the possibility of being outvoted (102 L. T. 118)—C. A.

### (g) Qualification.

22. *"Registered holder"—Transfer by Co-executors to one of Themselves—Notice of Breach of Trust—Shares Registered in Names of Executors.*]—A., at the time of a transfer of fifteen shares to him, was the registered holder of five shares in a company which by its constitution required each director to be the holder of not less than twenty shares. The transfer was executed by A. and his three co-executors to A. of shares, which, on the production of the probate of his father's will, had been registered in the names of the executors, to qualify him for the post of director to which he had been appointed a few days before the transfer bore date. One of A.'s co-executors purported to revoke his signature to the transfer, and at the expiration of the statutory period the company refused to recognise A. as a director on the ground of want of sufficient qualification shares.

HELD—although from the production of the probate to them the company had notice of the death of his father and the appointment of A. and his co-executors as executors of the will, they were wrong on those facts in assuming that the transfer to A. was made in breach of trust ;

## XII. Directors—Continued.

that the company's register must be rectified ; and A. was qualified as a director as holding twenty shares.

At the time of the execution of the transfer A. was one of the holders of 112 shares in the company registered in his name and that of his co-executors under his father's will.

HELD—that this also was a holding of shares which qualified A. as a director.

*In re Glory Paper Mills Co. Ltd., Dunster's Case* ([1894] 3 Ch. 473, per Lindley and Davey, L.JJ.) followed.

GRUNDY v. BRIGGS, [1910] 1 Ch. 444 ; 79 L. J. [Ch. 244 ; 101 L. T. 901 ; 54 Sol. Jo. 163 ; 17 Manson, 30—Eve, J.

### (h) Quorum.

[No paragraphs in this vol. of the Digest.]

### (i) Remuneration.

23. *Annual Sum to be Divided among Directors—Decision of Directors as to Mode of Division—Condition Precedent.*—By the articles of association of a company the directors were "entitled by way of remuneration for their services to the sum of £500 per annum, and such remuneration shall be divided amongst them as they shall decide. . . ."

HELD—that a decision by the directors as to how the remuneration was to be divided amongst them was a condition precedent to the right of a director to sue for his remuneration.

MORREL v. OXFORD PORTLAND CEMENT CO., [LD., 26 T. L. R. 682—Lawrance, J.

### (k) Vacation of Office.

24. *Permanent Director—Ordinary Director—Clause in Articles—Whether Applicable to Permanent Director.*—By a company's constitution its directors were divided into the categories of ordinary directors and permanent directors. Its articles of association provided that a permanent director might resign and an ordinary director might resign by notice in writing under a clause which provided that "a director" might give notice of his wish to resign by written notice to the secretary, and should vacate his office one month after such notice.

HELD—that the clause was not limited to ordinary directors, but that the resignation of a permanent director was included in its operation.

MOSELY v. KOFFYFONTEIN MINES, LD., [1911] 1 Ch. 73 ; 79 L. J. Ch. 647 ; 103 L. T. 139—Eve, J.

25. *"Insolvent"—Provision in Articles for Vacating Office of Insolvent Director.*—A provision in the articles of association of a company that the office of a director shall be vacated if he becomes "insolvent" is applicable when a director calls a meeting of his creditors and submits to them a statement of affairs showing

an excess of liabilities over assets, and the meeting passes a resolution in favour of a composition.

*R. v. Saddlers' Company* ((1863) 10 H. L. Cas. 401) applied.

HAROLD SISSONS & CO., LD. v. SISSONS, 54 [Sol. Jo. 802—Scrutton, J.

## XIII. DIVIDENDS.

### (a) General.

26. *Dividend Warrant Sent to Stockholder—Dividend Warrant Lost in Post—Liability—Indemnity.*—In their half-yearly report issued to the shareholders the directors of the defendant company stated the amount that would be divisible as dividend among the shareholders, and also stated that "the dividend warrants will be payable on Tuesday, February 16th, 1909, and will be sent by post to the proprietors on the previous day. . . ." At the half-yearly meeting of the shareholders held thereafter a resolution was passed that the dividend recommended be paid. A dividend warrant, which contained the following statement at the foot, "It [the warrant] will not be honoured after three months from date of issue unless specially endorsed for payment by the secretary," was duly posted to the plaintiff, who was a registered stockholder of the company, but it was lost in the post and never reached him, and it had not been presented for payment. Three months after the date of the dividend warrant the plaintiff applied for payment of the amount of the dividend, but as he refused to sign a form of indemnity sent to him by the company, the company refused to comply with his request, and thereupon he sued them to recover the amount, less income-tax.

HELD—that the only obligation on the defendants was to send the dividend warrant to the plaintiff by post, and that, having done so, they were discharged.

*Semble*, the dividend warrant was a cheque within the Bills of Exchange Act.

THAIRLWALL v. GREAT NORTHERN RY. CO., [1910] 2 K. B. 509 ; 79 L. J. K. B. 924 ; 103 L. T. 186 ; 26 T. L. R. 555 ; 54 Sol. Jo. 652 ; 17 Manson, 247—Div. Ct.

### (b) Payment out of Capital.

[No paragraphs in this vol. of the Digest.]

### (c) Preference Shares.

[No paragraphs in this vol. of the Digest.]

## XIV. FLOTATION AND INCORPORATION.

27. *Certificate of Incorporation—Conclusiveness—Companies Consolidation Act, 1908* (8 Edw. 7, c. 69), s. 17 (1).—A certificate of incorporation of a company is conclusive evidence that the company was authorised to be registered and was duly registered, and the Court cannot go behind it.



**XIV. Flotation and Incorporation—Continued.**

*In re Ennis and West Clare Ry. Co.* ((1879) 3 L. R. Ir. 94, at p. 104) followed.

*McGLADE v. LONDON MUTUAL INSURANCE [SOCIETY, LD., [1910] 2 Ch. 169; 102 L. T. 276; 26 T. L. R. 357; 54 Sol. Jo. 361—Eve, J. See S. C., on appeal, XVII. (a), infra.*

[See Companies (Converted Societies) Act, 1910 (10 Edw. 7 and 1 Geo. 5, c. 23).]

**XV. MANAGEMENT.**

[No paragraphs in this vol. of the Digest.]

**XVI. MEETINGS.**

*See also* Nos. 1, 4, *supra*.

**(a) General.**

[No paragraphs in this vol. of the Digest.]

**(b) Extraordinary.**

[No paragraphs in this vol. of the Digest.]

**(c) Special Resolution.**

[No paragraphs in this vol. of the Digest.]

**(d) Separate Class Meeting.**

**28. Scheme of Arrangement—Winding-up—Separate Class Meetings—Shares Partly Paid—Balance Paid in Advance of Calls—Conversion into Fully-paid Shares—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 120.]—**A company, having agreed to sell its business and assets, except uncalled capital, to another company in consideration of shares in the purchasing company, went into voluntary liquidation. The shareholders in the vendor company consisted of four classes, viz.:—Holders of £1 fully-paid ordinary shares, holders of £1 fully-paid deferred shares, holders of £1 ordinary shares with 10s. paid up, and holders of £1 ordinary shares with 10s. paid up and a further 10s. paid in advance of calls and carrying 5 per cent. interest. A scheme was prepared whereby (*inter alia*) the two classes of partly-paid shareholders were to receive a corresponding number of £1 shares with 10s. paid up in the purchasing company, but immediately after allotment the unpaid capital of those shares only in respect of which 10s. had been paid in advance of calls was to be called up without any notice of call, and those shares thereby converted into fully-paid shares. The majority of the holders of shares with 10s. paid in advance of calls opposed the scheme. There had not been held a separate meeting of this class of shareholders under sect. 120 of the Companies (Consolidation) Act, 1908, as they had been treated as holders of fully paid shares for the purpose of separate class meetings.

**HELD**—that the scheme could not be sanctioned, as the fact that there had not been held proper separate class meetings was in the circumstances fatal.

*IN RE UNITED PROVIDENT ASSURANCE CO., [LD., [1910] 2 Ch. 477; 79 L. J. Ch. 639; 103 L. T. 531—Eady, J.*

**29. “Meeting”—Sole Preference Shareholder.]—**Although a single individual cannot constitute

“a meeting” in the ordinary sense of that word the context may show the word to be used in an unusual sense and in such a way as to include the formal consent of the sole member of the class, the consent of which is required to be obtained “at a meeting.”

*Sharp v. Dawes* ((1876), 2 Q. B. D. 26) and *In re Sanitary Carbon Co.* ([1877] W. N. 223) commented upon.

*EAST v. BENNETT BROTHERS, LD., [1910] W. [N. 260; 27 T. L. R. 103; 55 Sol. Jo. 92—Warrington, J.*

**XVII. MEMORANDUM OF ASSOCIATION.****(a) General.**

**30. Conversion of Friendly Society into Company—Extension of Objects—Ultra Vires—Registration of Company—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 71—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 17.]—**A registered friendly society was converted into a company limited by guarantee, and the objects of the company as set forth in the memorandum of association were not only to continue the business of the friendly society, but also to carry on all kinds of insurance business. The company was duly registered. In an action by a member suing on behalf of himself and all other members of the company for an injunction to restrain the company from exercising the powers in the memorandum which were in excess of those of the original society:—

**HELD**—that even assuming that the plaintiff was right in his contention that it was not competent for the friendly society to convert itself into a limited company, he, as a member of the company, was not entitled to an injunction to restrain the company from carrying out the objects of its memorandum of association.

Decision of *Eve, J.* (102 L. T. 276; 26 T. L. R. 357; 54 Sol. Jo. 361) affirmed.

*McGLADE v. ROYAL LONDON MUTUAL INSURANCE SOCIETY, LD., [1910] 2 Ch. 169; 79 L. J. Ch. 631; 103 L. T. 155; 26 T. L. R. 471; 54 Sol. Jo. 505—C. A.*

**(b) Alteration.**

*See FRIENDLY SOCIETIES, No. 6.*

**XVIII. NOTICES.**

**31. Reconstruction—Notice by Dissident Shareholders—Not Left at Registered Office in Rhodesia—Waiver by Liquidator—Companies Ordinance, 1895, of Southern Rhodesia—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.]—**The liquidator of a company, registered under the Companies Ordinance, 1895, of Southern Rhodesia, having its registered office at Bulawayo, the articles providing that the company's business should be carried on in England, has power to waive a provision in the Ordinance, similar to that in sect. 161 of the Companies Act, 1862, for the service at the registered office of notice of dissent by share-



### XVIII. Notices—Continued.

holders not consenting to reconstruction within seven days of the confirmatory meeting.

**BRAILEY v. RHODESIA CONSOLIDATED, LD.,** [1910] 2 Ch. 95; 79 L. J. Ch. 494; 102 L. T. 805; 54 Sol. Jo. 475; 17 Manson, 222—Warrington, J.

**32. Notice of Special Business at Meeting—Appointment of Directors—Sufficiency of Notice calling Meeting.**—The plaintiff company had a board of three directors whose term of office expired in March, 1909. Notice was sent to the shareholders of a meeting to be held on March 19th, for the purpose of passing a resolution that the three directors should be re-elected, with such amendments and alterations as should be determined at the meeting. The articles of association provided that notice of a meeting should specify the general nature of the special business for which the meeting was convened, or which was proposed to be transacted. The articles also provided that the number of the directors should not be more than seven nor less than three. It was admitted that the appointment of additional directors was special business. At the meeting held on March 19th, the notice calling it was treated as read, the resolution was put, and an amendment to appoint the two defendants as additional directors was unanimously carried.

**HELD**—that the amendment by virtue of which the two defendants were elected as additional directors was sufficiently indicated in the notice convening the meeting.

**BETTS & CO., LD. v. MACNAGHTEN,** [1910] 1 Ch. 430; 79 L. J. Ch. 207; 100 L. T. 922; 25 T. L. R. 552; 53 Sol. Jo. 521; 17 Manson, 71—Eve, J.

### XIX. PROMOTERS.

**33. Sum Lent to Promoter and to be Repaid within Seven Days of Proposed Company going to Allotment—"Allotment."**—The plaintiff lent the defendant £50 to assist him in the promotion of a company, on the terms that £100 was to be repaid within seven days of the proposed company going to allotment. An allotment was made, but as in consequence of certain statements in the prospectus the company could not obtain a trading certificate, the directors called the allottees together and returned them their money.

**HELD**—that there had been an "allotment" within the meaning of the agreement between the plaintiff and the defendant, and that the plaintiff was entitled to recover the £100.

**ELLETT v. STERNBERG,** 27 T. L. R. 127—Banks, J.

### XX. PROSPECTUS.

#### (a) General.

**34. Agreement—Statement that Vendors "have Agreed to Subscribe for" Shares—Winding-up—Contributories.**—The prospectus of a company, signed by the vendors and issued to the public, stated that the vendors "have agreed to subscribe for the balance of £500 of the ordinary shares."

**HELD**—that the prospectus did not amount to proof of a concluded contract, binding on the company to allot, or the vendors to accept, the shares, and that the vendors, on a winding-up, were not liable, either on the ground of agreement or personal bar, to be placed on the list of contributories.

**TODD v. MILLEN,** [1910] S. C. 868; 47 Sc. L. R. [695]—Ct. of Sess.

#### (b) Liability of Directors.

[No paragraphs in this vol. of the Digest.]

#### (c) Particulars Required.

**35. Omission of Particulars Required—Right of Shareholder to Rectification of Register—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 81.**—Sect. 81 of the Companies (Consolidation) Act, 1908, does not absolutely entitle shareholders to rectification in case of the omission from the prospectus of the particulars required to be stated.

**IN RE WIMBLETON OLYMPIA, LD.,** [1910] 1 Ch. 630; 79 L. J. Ch. 481; 102 L. T. 425; 17 Manson, 220—Neville, J.

### XXI. PROXIES.

**36. Compromise or Arrangement—Order Summoning Meeting—Form of Proxy—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 120.**—An order to summon a meeting under sect. 120 of the Companies (Consolidation) Act, 1908, must always direct proxies to be in the form authorised by Vaughan-Williams, J. (Practice Direction, [1896] W. N. 56; see Palmer's Company Precedents, 9th ed., Part II., 901, Form 879), or in such other form as may be settled in chambers.

**PRACTICE DIRECTION,** [1910] W. N. 154; 45 [L. J. N. C. 423—Eady, J.

### XXII. RECEIVERS.

See also No. 14, *supra*; SOLICITORS, No. 3.

**37. Receiver and Manager Appointed in Debenture-holders' Action—Order Authorising Receiver to Borrow—Advance by Bank—First Charge on Property—Expenses of Receiver—Costs in Debenture-holders' Action—Priority.**—A receiver and manager having been appointed in a debenture-holders' action, an order was made in the action authorising the receiver and manager to borrow a sum of money for the company's purposes, the sum so borrowed to be a first charge on the assets covered by the debentures. The money was advanced by a bank, in whose favour the receiver executed a deed giving a first charge upon all the company's property and assets and in priority to the debentures. The deed did not expressly exclude the personal liability of the receiver and manager, but the judge came to the conclusion upon the construction of the deed that the bank was content to rely upon their security and upon that alone. The assets eventually proved insufficient to pay in full the costs of the plaintiff in the debenture-holders' action, the receiver and manager's remuneration, and the amount advanced by the bank.

## XXII. Receivers—Continued.

**HELD**—that the plaintiff's costs of action as between solicitor and client and the remuneration of the receiver and manager had priority over the claim by the bank for the sum advanced.

*In re Glasdir Copper Mines, Ltd.* ([1906] 1 Ch. 365) and *Strapp v. Bull* ([1895] 2 Ch. 1) discussed.

*In re New Zealand Midland Ry. Co.* ([1901] 2 Ch. 357) applied.

**IN RE A. BOYNTON, LD., HOFFMANN v. A. [BOYNTON, LD., [1910] 1 Ch. 519; 79 L. J. Ch. 247; 102 L. T. 273; 26 T. L. R. 294; 54 Sol. Jo. 308; 17 Manson, 36—Warrington, J.**

**38. Debenture-holders' Action—Default of Receiver—Sureties—Rights of Trade Creditors against Estate—Subrogation.**—Persons with whom a receiver and manager has dealings, and in whose favour he incurs liabilities, acquire no greater rights against the estate being managed than the receiver and manager himself has against such estate. A receiver and manager would only be entitled to be indemnified out of the estate in respect of trade liabilities which he had incurred and satisfied subject to his first paying all sums due from himself to the estate. The trade creditors therefore have no higher right by way of subrogation to the right of the receiver and manager to indemnity. Consequently the trade creditors can only claim to have their debts paid out of the estate subject to deduction of any sum which remains due to the estate from the receiver and manager. Furthermore, even though the sureties to the bond entered into by the receiver and manager submit to be treated as though an action had been brought to enforce their bond in respect of the sum remaining due to the estate from the receiver and manager, yet if (as in this case) the object of such submission is only to shorten the proceedings and not to alter the rights of the parties, the trade creditors will not be thereby enabled to recover from the sureties the sum retained by the receiver and manager. Therefore, the loss of such sum will fall finally upon the creditors.

**IN RE BRITISH POWER TRACTION AND LIGHTING CO., LD., HALIFAX JOINT STOCK BANKING CO., LD. v. BRITISH POWER TRACTION AND LIGHTING CO., LD., [1910] 2 Ch. 470; 79 L. J. Ch. 666; 103 L. T. 451; 54 Sol. Jo. 749—Eady, J.**

**39. Personal Liability—Receiver Appointed on Behalf of Debenture-holder.**—A receiver who has been appointed under the terms of a mortgage debenture issued by a company is the agent of the company and not of the debenture-holder, and, in the absence of notice of a claim against the company he is under no personal liability to refund moneys which he has paid into a receivership account.

**BISSELL v. ARIEL MOTORS (1906), LD., AND [WALKER, 27 T. L. R. 73—Phillimore, J.**

**40. Debenture-holders' Action—Property Abroad—Obtaining Possession—Practice—Power of Attorney—Order to Revoke Power and**

**to Execute Power Appointing Attorney for Debenture-holders.**—The chief assets of the defendant company were mining properties in Peru. The company had a registered office in London, and the firm of D. F. & Co. in Peru held a power of attorney of the company. A receiver and manager of the company's properties in Peru having been appointed in a debenture-holders' action, D. F. & Co. took possession of them on behalf of the receiver. The company revoked the power of attorney to D. F. & Co. by granting it to E. C., who ousted D. F. & Co. from possession of the properties. An order was made by the Court embodying an undertaking by the company to order E. C. by telegram to give up possession to D. F. & Co. The telegram was sent but E. C. telegraphed back that a telegraphic order was not sufficient, and that he awaited further instructions by letter, and in the meanwhile he remained in possession to the alleged detriment of the debenture-holders' rights. The company contended that they had carried out their undertaking by sending the telegram, and that further legal proceedings, if any, should be taken in Peru. It appeared that D. F. & Co. though holding the power of attorney of the debenture-holders and their trustees were powerless to eject E. C. in Peru, as long as he held the company's power of attorney, because the law of Peru recognised the company alone as entitled to possession.

**HELD**—that the defendant company should be ordered to revoke the power of attorney granted to E. C., so far as related to possession of the properties in Peru, and to execute a power appointing one or more members of the firm of D. F. & Co. attorney or attorneys to take possession of the properties, the debenture-holders undertaking to indemnify the company against the acts of such attorney or attorneys.

**IN RE HUINAC COPPER MINES, LD., MATHESON [ & Co. v. THE COMPANY, [1910] W. N. 218; 130 L. T. Jo. 592; 45 L. J. N. C. 726—Neville, J.**

**41. Amalgamated Statutory Gas and Water Company—Gross or Net Earnings—Form of Order.**—The defendant company was a statutory amalgamation of two statutory companies, the Companies Clauses Consolidation Act, 1845, being incorporated in each of its special Acts. The plaintiff, who held mortgage debentures in the company took proceedings to enforce his security, and a receiver was appointed.

**HELD**—that the receiver was entitled to the net earnings of the company.

Proper form of order in such a case.

**IN RE TICEHURST AND DISTRICT WATER AND [GAS CO., LOCKE v. TICEHURST AND DISTRICT WATER AND GAS CO., 128 L. T. Jo. 516—Eve, J.**

## XXIII. RECONSTRUCTION.

See No. 31, *supra*; No. 57, *infra*.

## XXIV. REDUCTION OF CAPITAL

### (a) General.

**42. Modification of Preferential Rights—Consolidation of Shares of Different Classes—Articles**

XXIV. *Reduction of Capital—Continued.*

—*Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 45.]—Where preferential rights of shareholders arise under the company's articles of association which also provide for the modification of those rights, they may be so modified without having recourse to sect. 45 of the Companies (Consolidation) Act, 1908, as that section only operates when the preferential rights are determined, not by the articles, but by the memorandum of association.

IN RE AUSTRALIAN ESTATES AND MORTGAGE [Co., LD., [1910] 1 Ch. 414; 79 L. J. Ch. 202; 102 L. T. 458; 17 Manson, 63—Neville, J.

**43. Scheme for Reduction — Participation Certificates.**—A scheme for the reduction of the capital of a company provided that the ordinary shares of £1 each, 4,000 in number, should be extinguished; that the preference shares of £10 each, 80,000 in number, should be reduced to £8 each; that the A. cumulative preference shares of £10 each, 75,000 in number, should be reduced to £1 10s. each; that the preference and A. preference shares should be consolidated and converted in £10 shares, ranking *pari passu* as regards capital and dividends; that all arrears of dividends should be extinguished; and that the company by a trust deed should issue participation certificates of £2 each to the preference and A. preference shareholders, one for each original £10 share, and should be bound to pay one-third of the surplus available profits of each year (after payment of a dividend of 5 per cent. on the shares) to holders of participation certificates as a dividend thereon and to apply the remaining two-thirds in redemption of the certificates at their face value in accordance with drawings. The scheme having been duly approved by the necessary majorities of each class of shareholder, an order sanctioning the reduction was made, the judge directing the scheme to be scheduled to the order, and the words "and reduced" to be continued for one month.

IN RE HOARE & CO., LD. AND REDUCED, [1910] [W. N. 87; 45 L. J. N. C. 237; 128 L. T. Jo. 517—Neville, J.

**44. Publication of Reasons and Other Information — Companies (Consolidation) Act, 1908** (8 Edw. 7, c. 69), s. 55.]—Where a brewery company, having sustained heavy loss through the depreciation of its assets, following on a period when there had always been a credit balance to profit and loss, petitioned for reduction of capital, the Court confirmed the reduction but required the company to publish a short memorandum of the reasons for, and causes leading to, the reduction under sect. 55 of the Companies (Consolidation) Act, 1908.

IN RE TRUMAN, HANBURY, BUXTON & CO., [LD., [1910] 2 Ch. 498; 79 L. J. Ch. 740; 103 L. T. 553—Eady, J.

(b) *Loss of Capital.*

**45. Practice—Petition—No Evidence of Loss of Capital Required—Companies Act, 1877** (40 &

41 Vict. c. 26), s. 3—*Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 46 (1).]—On a petition for confirmation of a proposed reduction of capital no evidence of loss of capital is necessary. Sect. 46 (1) of the Companies (Consolidation) Act, 1908, has made it clear that the special instances given in that section and in the corresponding sect. 3 of the Companies Act, 1877, are not exhaustive, and do not limit the generality of the section.

IN RE LOUISIANA AND SOUTHERN STATES [REAL ESTATE AND MORTGAGE CO., [1909] 2 Ch. 552; 79 L. J. Ch. 17; 101 L. T. 495; 16 Manson, 351—Neville, J.

(c) *Power to Reduce.*

**46. Alteration of Articles of Association—Resolutions taking Power to Reduce Capital and Reducing Capital Passed at Same Meeting—Confirmed at Subsequent Meeting—Companies (Consolidation) Act, 1908** (8 Edw. 7, c. 69), ss. 13 (1), 46 (1).]—A company which under its articles of association had no power to reduce its capital passed at an extraordinary general meeting two resolutions, one of which adopted new articles of association whereby the company was authorised to reduce its capital, and the other provided for the reduction in a certain way. These resolutions were both duly confirmed as special resolutions in terms of the statute at a subsequent extraordinary meeting.

HELD—that the procedure was incompetent, in respect that at the time the resolution to reduce was adopted there was no power to reduce, such resolution not being competent until the resolution conferring the power to reduce had been duly confirmed.

IN RE OREGON MORTGAGE CO., LD., [1910] [S. C. 964; 47 Sc. L. R. 702—Ct. of Sess.

(d) *Return to Shareholders of Capital not required.*

**47. Power to Return Accumulated Profits to Fully paid Shareholders—Other Shares not Fully Paid — Companies (Consolidation) Act, 1908** (6 Edw. 7, c. 69), s. 40.]—Of the ordinary £5 shares of the defendant company, there were 8,047 fully paid and 53,953 which were paid up only to the extent of £1 per share. The company having accumulated a large reserve fund, passed and confirmed a special resolution for the return of £4 per share on the 6,047 fully-paid shares.

HELD—that the company had power under sect. 40 of the Companies (Consolidation) Act, 1908, to reduce the paid-up capital in the manner proposed by the special resolution.

NEALE v. CITY OF BIRMINGHAM TRAMWAYS [Co., [1910] 2 Ch. 464; 79 L. J. Ch. 683; 175; 103 L. T. 59; 26 T. L. R. 588; 54 Sol. Jo. 651—Eady, J.

XXV. *REGISTER OF MEMBERS.*

See also No. 59, *infra*.

**48. Rectification—Transfer of Shares—Firm Name — "Person" — Companies (Consolidation)**

**XXV. Register of Members—Continued.**

*Act*, 1908 (8 Edw. 7, c. 69), s. 32.]—Two or more persons, transferees of shares in a limited company by a transfer to them in their partnership name, are not entitled to claim to be entered on the register of the company in their partnership name.

IN RE VAGLIANO ANTHRACITE COLLIERIES, [Ld., [1910] W. N. 187; 79 L. J. Ch. 769; 103 L. T. 211; 54 Sol. Jo. 720—Joyce, J.

**XXVI. REGISTERED NAME.**

**49. Practice—Appearance—Reference to Incorporation.**—The reference to a company's incorporation, which is in practice required on the appearance *præcipe* in addition to the name of the company, when the name does not already indicate that the company is incorporated, is explanatory only, and does not form part of the name by which the company appears.

IN RE AN APPLICATION OF THE CARRON CO. [26 T. L. R. 458; 54 Sol. Jo. 476—Eady, J.

See S. C. under TRADE MARKS, I. (3).

**50. Similarity of Name—Deception or Confusion—Pecuniary Loss—Injunction.**—A company, whose business at the date of the action was the growing of tea and rubber, was registered as the Ouvah Ceylon Estates, Ltd. A second company, in ignorance of the existence of the first, subsequently obtained registration as the Uva Ceylon Rubber Estates, Ltd., for the purpose of acquiring and developing a rubber estate. The first company moved for an injunction to restrain the second from carrying on business under its present name.

HELD—on the ground that the similarity of names would inevitably lead to confusion and to interference with the plaintiffs' business, that the plaintiffs were entitled to the injunction asked for.

*North Cheshire and Manchester Brewery Co. v. Manchester Brewery Co.* ([1899] A. C. 83) considered and applied.

Decision of Joyce, J. (103 L. T. 16; 27 R. P. C. 645) affirmed.

OUVAH CEYLON ESTATES, LTD. *v.* UVA CEYLON [RUBBER ESTATES, LTD., 103 L. T. 416; 27 T. L. R. 24; 27 R. P. C. 753—C. A.

**XXVII. SALE OF UNDERTAKING.**

See also INCOME TAX, No. 2.

**51. Sale of Business to Foreign Company—Definition of Company—Ultra Vires—Companies (Consolidation) Act**, 1908 (8 Edw. 7, c. 69), ss. 192, 285.]—A company cannot sell or transfer its business or property under sect. 192 of the Companies (Consolidation) Act, 1908, to a foreign company.

THOMAS *v.* UNITED BUTTER COMPANIES OF [FRANCE, LD., [1909] 2 Ch. 484; 79 L. J. Ch. 14; 101 L. T. 388; 25 T. L. R. 824; 53 Sol. Jo. 733; 16 Manson, 345—Eve, J.

**XXVIII. SECRETARY.**

See No. 2, *supra*.

**XXIX. SHAREHOLDERS.**

See also XVIII., *supra*.

**52. Ultra vires Resolution—Injunction to Restrain Company from Acting on Resolution—Shareholder Party to Resolution.**—A shareholder is not debarred from claiming an injunction to restrain a company from acting on an *ultra vires* resolution by the fact that he has himself been a party to the passing of the resolution, and has assented to previous illegal acts done under it.

*Towers v. African Tug Co.* ([1904] 1 Ch. 558) distinguished.

MOSELY *v.* KOFFYFONTEIN MINES, LD., [1910] [W. N. 231; 27 T. L. R. 61; 55 Sol. Jo. 44—C. A.

See S. C. under VI., *supra*.

**XXX. SHARES.**

See also No. 21, *supra*.

**(a) General.**

[No paragraphs in this vol. of the Digest.]

**(b) Allotment.**

See No. 33, *supra*.

**(c) Calls.**

See also No. 54, *infra*.

**53. Mode of Payment.**—On an application to rescind or vary an order made in Chambers on April 26th, 1910, directing the liquidators of a company to make a call of £5 per share on July 1st, 1910, so that the order should provide for the call being payable in ten instalments of 10s. each, commencing on July 1st and recurring every six months:—

HELD—(1) that as to those shareholders who were able to pay but required time to realise securities and who were willing to pay an instalment of £2 per share on July 1st, or within thirty days of that date, and further instalments of 30s. each with interest on January 1st and July 1st, 1911, or within thirty days of those dates respectively, the liquidators could accept payment by those instalments without requiring an affidavit of means; and (2) that as to those shareholders who by affidavits of means—which affidavits should not be put upon the file or become public property—satisfied the liquidators that they were unable to pay by larger instalments than 10s. half-yearly with interest, the liquidators could properly accept payment by such instalments.

IN RE LAW GUARANTEE TRUST AND ACCIDENT [SOCIETY, LD., 26 T. L. R. 565—Eady, J.

**(d) Certificate.**

[No paragraphs in this vol. of the Digest.]



## XXX. Shares—Continued.

## (e) Forfeiture.

**54. Injunction to Restrain Forfeiture—Pending Action to Rescind Contract to Take Shares—Unpaid Calls.**—The plaintiff was allotted eighty shares of £1 each in the defendant company in respect of which he paid up £60. Subsequently he gave notice to the company rescinding the contract to take the shares on the ground of misrepresentation in the prospectus on the faith of which he had applied for them. Later he received from the company notice to pay the balance due upon the shares. He then issued a writ against the company claiming, *inter alia*, rescission of the contract to take shares and repayment with interest of the money already paid for them. After that he received notice from the company that his shares would be liable to forfeiture if the amount unpaid on them were not paid by a certain date. Before the date mentioned he applied for an injunction restraining the company, pending the trial of the action, from making any call in respect of his shares and from forfeiting them.

**HELD**—that, the plaintiff consenting to pay the amount of the unpaid call into Court, the injunction should be granted.

Decision of Lush, J. reversed.

**JONES v. PACAYA RUBBER AND PRODUCE CO.,**  
[LD., [1910] W. N. 257—C. A.]

## (f) Issued at a Discount.

[No paragraphs in this vol. of the Digest.]

## (g) Issued not for Cash.

**55. Income Bonds—Charges on Profits—Exchange for Fully-paid Shares—Ultra Vires.**—The appellant company issued 5,000 bonds of £10 each, repayable by instalments, on the terms that the company would, when and so far as there were net profits available for the purpose, pay to each registered holder the principal money and £25 by way of bonus. It was declared on the face of each bond that the principal and bonus should be payable exclusively out of net profits. The holder of any ten bonds had the option of converting the principal money into a first mortgage debenture of the company for £100, without prejudice to his right to the bonus. It was also provided that the company might after six calendar months' notice pay off the principal money and bonus. The option of conversion into first mortgage debentures was largely exercised by the bondholders, but £125,000 in respect of bonus remained unpaid, the company not having made any profits. The company proposed to extinguish this liability in respect of the bonus by the issue of fully-paid shares.

**HELD**—that the proposed transaction was *ultra vires* because it was an issue of shares without payment, inasmuch as the consideration for the shares was the release of a charge upon money which did not belong to the company as a corporation but to the shareholders as individuals.

Decision of C. A. ([1909] 1 Ch. 754; 78 L. J. Ch. 508; 100 L. T. 703; 16 Manson, 138) affirmed.

**FAMATINA DEVELOPMENT CORPORATION, LD.**  
[AND OTHERS v. BURY, [1910] A. C. 439; 79 L. J. Ch. 597; 102 L. T. 866; 26 T. L. R. 540;  
54 Sol. Jo. 616; 17 Manson, 242—H. L.]

## (h) Transfer.

*See also* No. 48, *supra*; No. 59, *infra*.

**56. Transfer by Co-executors to one of Themselves—Assumption of Breach of Trust—Refusal to Register.**—A company is not justified in refusing to register a transfer of shares on the assumption that it is a breach of trust. The proper course is for the company to give notice that unless proceedings are taken within a limited time they will proceed to register the transfer.

**GRUNDY v. BRIGGS,** [1910] 1 Ch. 441; 79 L. J.  
[Ch. 244; 101 L. T. 901; 54 Sol. Jo. 163; 17  
Manson, 30—Eve, J.]

## (i) Underwriting Agreements.

**57. Company—Reconstruction—Shares partly Paid Up—Underwriting—Commission—Validity of Agreement—Ultra Vires—Companies (Consolidation) Act, 1908** (8 Edw. 7, c. 69), s. 89.—A company was formed to acquire the assets and undertake the liabilities of an old company under a scheme for the reconstruction of the latter. The old company agreed to sell its assets to the new company for the issue of certain shares of 5s. each, upon which 3s. 6d. was to be deemed to be paid up. The new company entered into an agreement with "contractors" whereby the latter undertook that if and so far as the shareholders of the old company would not take up the shares of the new company and the liquidator was unable to sell them, the contractors themselves would become responsible for the amount of the capital unpaid, and the contractors agreed to give a sum not exceeding a halfpenny a share to the liquidator, and then to apply to the new company to have those shares allotted to them. The commission to be paid to the contractors by the new company was 10 per cent. The articles of the company authorised the payment of underwriting commission, provided it did not exceed 25 per cent.

**HELD**—that the agreement was in effect an agreement for underwriting within sect. 89 of the Companies (Consolidation) Act, 1908, and was perfectly legitimate.

**BARROW v. PARINGA MINES (1909), LD.,** [1909]  
[2 Ch. 658; 78 L. J. Ch. 723; 101 L. T. 346;  
16 Manson, 313—Neville, J.]

## XXXI. UNREGISTERED COMPANIES.

[No paragraphs in this vol. of the Digest.]

## XXXII. VOTING.

*See* No. 21, *supra*.



## XXXIII. WINDING UP.

See also Nos. 19, 53, *supra*.

## (a) General.

**58. Solicitor's Lien—Retainer by Company in an Action—Retainer by Liquidator—Solicitor Discharged by Liquidator During the Course of the Action.**—A limited company brought an action against three of its directors, and obtained an interim injunction. A winding-up order was subsequently made against the company, and a liquidator was appointed. A solicitor was retained in the action by the company, and after the winding up by the liquidator, who discharged him before the trial. The liquidator applied to make the solicitor, subject to his lien, deliver up papers for the purposes of the action.

**HELD**—that the solicitor must hand over any documents which had come into his possession since, but not those prior to, the winding-up order.

**IN RE RAPID ROAD TRANSIT CO.,** [1909] 1 Ch. [96; 78 L. J. Ch. 132; 99 L. T. 774; 53 Sol. Jo. 83; 16 Manson, 289—Neville, J.]

## (b) Assets.

[No paragraphs in this vol. of the Digest.]

## (c) Compulsory Order.

See Nos. 64, 69, *infra*.

## (d) Contributories.

See also No. 34, *supra*.

**59. List of Contributories—Transfer of Shares to Escape Liability—Validity—Out-and-Out Transfer—Bona fides—Power of Directors to Reject Transferee—Equitable Rights of Transferee to Avoid Transfer—Rights of Liquidator.**—Where the registration of an out-and-out transfer of shares has not been obtained by any falsehood or concealment practised by the transferor towards the company, the company is bound by such registration, and the liquidator in the winding up of the company is not entitled to take advantage of any equitable rights which the transferee may have as against the transferor to have the transfer set aside.

As part of the bargain for the transfer of shares the transferor may lawfully agree to indemnify the transferee in respect of the transaction; what the transferor cannot do, if he wishes to escape liability on the shares, is to reserve any benefit to himself in them notwithstanding the transfer. The fact, however, that the transferor has given the transferee an indemnity may be a material circumstance in determining whether the transferor has reserved any benefit under the shares.

Where the articles contain a clause empowering the directors to reject a transferee whom they do not approve of, the transferor cannot escape liability if he has actively by falsehood or passively by concealment induced the directors to pass a transfer (even though it be an out-and-out transfer) which, if he had not so concealed or deceived, they would have refused to register; or if by collusion with the directors he

has procured them in breach of their duty to pass a transfer which they ought not to have passed; or has procured the postponement of the commencement of the winding up in order to get time to execute and tender such a transfer for registration.

*In re Mexican and South American Co.; Ex parte De Pass* ((1859) 4 De G. and J. 544) applied.

*In re Mexican and South American Co., Ex parte Hyam* ((1859), 1 De G. F. & J. 75); *In re Mexican and South American Mining Co., Ex parte Costello* ((1860), 2 De G. F. & J. 302); and *In re Electric Telegraph Co. of Ireland, Ex parte Budd* ((1861), 3 De G. F. & J. 297) distinguished.

*In re Mexican and South American Mining Co., Lund's Case* ((1859), 27 Beav. 465) overruled.

*In re Phoenix Life Assurance Co., Ex parte Hatton* ((1862), 31 L. J. Ch. 340) distinguished.

*In re Discoverers Finance Corporation, Cooper's Case* ([1908] 1 Ch. 141) overruled.

Decision of Neville, J. ([1910] 1 Ch. 207; 101 L. T. 672; 26 T. L. R. 98) affirmed.

**IN RE THE DISCOVERERS FINANCE CORPORATION, LD., LINDLAR'S CASE,** [1910] 1 Ch. 312; 79 L. J. Ch. 193; 102 L. T. 150; 26 T. L. R. 291; 54 Sol. Jo. 287; 17 Manson, 46—C. A.

**60. List of Contributories—Certificate that Shares Fully Paid—Estoppel—Firm Registered as Proprietor of Shares not Fully Paid—Certificate Signed by Member of Firm as Director of Company—Constructive Notice.**—C. and K., trading in partnership as C., K. & Co., mortgaged a sailing ship for £1,000 and paid the money to a company for 1,000 fully-paid £1 shares, and then sold the ship, subject to the mortgage, to the company for £500. The money was credited by the company in their account with E., a promoter of the company, who was at that time keeping their books, as being in payment of the 5s. per share payable on application on 4,000 shares applied for by E., and subsequently allotted to him. Later, K. having been elected a director of the company, a certificate, signed by K. and another director, was issued by the company to C., K. & Co. stating that they were the registered proprietors of 1,000 fully-paid ordinary shares of £1 each, and E. executed a transfer to C., K. & Co. of 1,000 shares for a nominal consideration. Ten shillings a share was payable on allotment of shares of the company, and a final call of 5s. a share was made, but no demand for these sums was made on C., K. & Co. On the liquidation of the company, the liquidator had entered C., K. & Co. on the list of contributories for 1,000 shares with only 5s. paid. The Judge found on the evidence that the transaction as between the firm and the company was in good faith, and that there was no evidence of collusion between K. and E.

**HELD**—that the signing of the certificate by K. did not prevent its acting as an estoppel in favour of his firm; that K. was not affected by constructive notice in the absence of actual

## XXXIII. Winding up—Continued.

knowledge of what appeared in the books of the company; and that C., K. & Co. were entitled to have their name removed from the list of contributories.

IN RE COASTERS, LD., [1911] 1 Ch. 86; [1910] [W. N. 235; 103 L. T. 632—Neville, J.]

## (e) Creditors.

61. *Creditor's Petition—Opposed by all other known Creditors—Holders of Deposit Notes Payable to Bearer unknown—Proposed Scheme of Reconstruction—Meeting of Creditors directed.*—A scheme was proposed to reconstruct a company in voluntary liquidation. All the company's known creditors approved of the scheme, except one who presented a petition for compulsory winding-up. The company had issued deposit notes payable to bearer, and the names and addresses of the holders were not known. The Court, considering that it was advisable that the wishes of the creditors holding these deposit notes should be ascertained, directed that a meeting of the creditors of the company should be summoned by advertisement in the *Gazette* and two London newspapers—the question for the meeting to be whether a compulsory winding-up by the Court was desired.

IN RE INVESTMENT BANK OF LONDON, LD., 130 [L. T. Jo. 149—Neville, J.]

## (f) Examination.

62. *Official Receiver's Report—Allegation of Fraud against Director—Exculpation of Person against whom Charge Made—Liability of Official Receiver to be Ordered to Pay Costs Personally—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8 (b).*—The Companies (Winding-up) Act, 1890, s. 8 (2), provides that an official receiver after making a preliminary report as provided in sub-sect. 1 of the section, "may also, if he thinks fit, make a further report or reports stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since the formation thereof."

Under the above section the official receiver discharges a duty of a judicial character, and there is therefore no jurisdiction to order that he shall personally bear the costs of the public examination of a person against whom he has made a further report to the Court. Where, however, on a successful application by such person for an order exculpating him from the charges made against him in the official receiver's report, the official receiver appears and opposes it, and thus makes himself a respondent to the proceedings, the Court has jurisdiction to make him personally pay the costs of the application.

Decision of Div. Ct. ([1910] 2 K. B. 67; 102 L. T. 532) reversed.

IN RE JOHN TWEDDLE & Co., [1910] 2 K. B. [697; 80 L. J. K. B. 20; 103 L. T. 257; 26 T. L. R. 583—C. A.]

## (g) Fraudulent Preference.

63. *Debenture—Cash Paid "at the Time"—Validity of Charge Created within Three Months of Winding up—Floating Charge—Registration—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 93, 210, 212.*—Where the payment of a loan to a company and the granting in return of a debenture operating as a floating charge are substantially one transaction, such a floating charge, if made within three months of the commencement of the winding up of the company, is not invalid under sect. 212 of the Companies (Consolidation) Act, 1908, as regards money paid before the actual execution of the debenture. The question whether any particular payment is made "at the time of" the creation of the security is a question of fact depending on the circumstances of each particular case; a payment made on account of the consideration for the security in anticipation of its creation and in reliance on a promise to execute it, although made some days before its execution, is made at the time of its creation within the meaning of the section.

At a board meeting of a limited company held on November 25th, 1909, the directors resolved to accept the offer of a loan of £1,000 upon terms already agreed. It was further resolved that a debenture be prepared in favour of S., the lender, and that the company's seal be affixed thereto at the next board meeting. S. thereupon handed to the company's secretary a cheque for £350, and another cheque for a similar amount on December 3rd. On December 6th the board met again, and the company's seal was affixed to a debenture in favour of S., who thereupon paid over £300, the balance of the loan, to the company. The debenture was registered on December 23rd. The company went into voluntary liquidation in January, 1910.

HELD—that the two payments of £350 each were made "at the time of" the creation of the charge; that the charge had not been created more than twenty-one days before registration within sect. 93 of the Act; and that the charge was therefore valid for the sum of £1,000.

Decision of Neville, J. ([1910] 1 Ch. 758; 79 L. J. Ch. 392) affirmed.

IN RE COLUMBIAN FIREPROOFING Co., LD., [1910] 2 Ch. 120; 79 L. J. Ch. 583; 102 L. T. 835; 17 Manson, 237—C. A.]

64. *Compulsory Following Voluntary Winding up—Date to be Regarded—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 164—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 210.*—A compulsory order supersedes a voluntary winding up, and when a company which has gone into voluntary liquidation is ordered to be wound up by the Court, the date to which regard is to be had in ascertaining whether a fraudulent preference has been made within the meaning of sect. 164 of the Companies Act, 1862, is the date of the presentation of the petition, and not that of the extraordinary resolution.

**XXXIII. Winding up—Continued.**

*In re Taurine Co.* ((1883) 25 Ch. D. 118) applied.

**IN RE RUSSELL HUNTING RECORD CO., LD.**  
[1910] 2 Ch. 78; 79 L. J. Ch. 498; 103 L. T. 57; 54 Sol. Jo. 539; 17 Manson, 229—Eady, J.

**(h) Liquidators.**

[No paragraphs in this vol. of the Digest.]

**(i) Petition.**

*See also* Nos. 67, 68 69, *infra*.

**65. Right to Present Petition—Bondholder—Contingent or Prospective Creditor.**—“Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 30 (4), 137 (1).”—A petition for the winding up of a company may be presented by the registered holder of a bond which entitles him, in consideration of certain periodical payments, to a principal sum of money from the company at a future date, as such a bondholder is a “contingent or prospective creditor” within the meaning of sect. 137 (1) of the Companies (Consolidation) Act, 1908.

**IN RE BRITISH EQUITABLE BOND AND [MORTGAGE CORPORATION, LD., [1910]**  
1 Ch. 574; 79 L. J. Ch. 288; 102 L. T. 421; 17 Manson, 177—Neville, J.

**66. Right to Present Petition—Fully Paid-up Shareholder—No Assets—No Tangible Interest.**—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 141 (1).—Sect. 141 (1) of the Companies (Consolidation) Act, 1908, enacts that the Court shall not refuse a petition for the winding up of a company merely on the ground that the company has no assets. The petitioner, a shareholder holding 5,000 fully-paid shares in a company, petitioned the Court to have it wound up on the ground that the company was insolvent, that it had no assets, and that its substratum had gone.

**HELD**—that the petition must be dismissed.

*In re Rica Gold Washing Co.* ((1879) 11 Ch. D. 36) followed.

**IN RE KASLO-SLOCAN MINING AND FINANCIAL [CORPORATION, LD., [1910] W. N. 13; 45 L. J. N. C. 55; 128 L. T. Jo. 266—Neville, J.**

**(k) Practice.**

**67. Debt Less than £50—Practice—Special Circumstances.**—The practice of the Court is not to make an order for compulsory winding-up of a company where the petitioner's debt is under £50 except under special circumstances, such as the case of a company with sufficient assets using the practice of the Court to enable them to refuse to pay a debt, as in *In re World Industrial Bank, Ltd.* ([1909] W. N. 148), or of a company which can obviously never commence business. The fact that a receiver has been appointed in a debenture-holders' action does not amount to a special circumstance.

**IN RE INDUSTRIAL INSURANCE ASSOCIATION, [LD., [1910] W. N. 245; 130 L. T. Jo. 81; 45 L. J. N. C. 807—Neville, J.**

**68. Petition—Solicitor Acting for Creditors and Contributories—Separate Counsel—One or Two Sets of Costs.**—A solicitor acting for both creditors and contributories, opposing a winding-up petition, who instructs separate counsel for the creditors and contributories, is as a general rule entitled to one set of costs under the usual direction of one set of costs to the parties attending and opposing. But under that direction the taxing officer in his discretion may in a proper case allow two sets of costs.

**IN RE SILBERHÜTTE SUPPLY CO., LD., [1910]**  
[W. N. 81; 45 L. J. N. C. 205—Neville, J.

**69. Several Petitions—Order Made on Petition First Presented—Special Circumstances.**—Where several petitions for the winding-up of a company have been presented in different Courts, unless some very special grounds exist, the winding-up order will be made upon the petition first presented.

*Semble*—A hostile attitude on the part of the petitioners towards other unsecured creditors would amount to such special grounds.

**IN RE BAMFORD, LD., [1910] 1 I. R. 390—**  
[Meredith, M.R., Ireland.

**(l) Proof.**

[No paragraphs in this vol. of the Digest.]

**(m) Reconstruction.**

*See* No. 61, *supra*.

**(n) Surplus Assets.**

**70. Salary Payable out of Profits—Debentures Realised after Commencement of Winding-up—“Profits.”**—The appellants were to receive a certain monthly salary from the respondent company, subject to the proviso that they should not be entitled to draw such salary “except only out of profits, if any, arising from the business of the company which may from time to time be available for such purpose, but such salary shall nevertheless be cumulative, and accordingly any arrears thereof shall be payable out of any of succeeding profits as aforesaid.” The company, whose business included the purchase and sale of shares, acquired certain debentures, but for some time no value was attributed to them in the company's balance-sheet. The company went into voluntary liquidation. At the commencement of the winding-up there was a debit balance on profit and loss account. The debentures were sold by the liquidator shortly after his appointment.

**HELD**—that the realisation of the debentures was not new business carried on by the liquidator, and that the entire proceeds from the sale must be treated as profits arising from the company's business out of which the appellants were entitled to be paid.

*In re Bridgewater Navigation Co.* ([1891] 2 Ch. 317) followed.

*Frimes v. Bulfontein Mining Co.* (64 L. T. Rep. 12; [1891] 1 Ch. 140) and *Rishton v. Grissell* ((1868) L. R. 5 Eq. 326) distinguished.

Decision of Eady, J., reversed.

**IN RE SPANISH PROSPECTING CO., LD., [1911]**  
[1 Ch. 92; [1910] W. N. 241; 103 L. T. 609; 27 T. L. R. 76; 55 Sol. Jo. 63—C. A.

## XXXIV. VOLUNTARY WINDING UP.

## (a) General.

[No paragraphs in this vol. of the Digest.]

## (b) Liquidators.

**71. Mistaken Payment—Repayment—Officer of Court.**—A company in voluntary liquidation owed a bank on one account a sum larger than its credit balance on another account with the same bank. The bank instead of setting off the two accounts and claiming the balance, by mistake paid to the voluntary liquidator the amount of the credit balance on the one account.

**HELD**—that the voluntary liquidator was in the same position as a trustee in bankruptcy and an officer of the Court, and that so much of the sum paid in error as remained in the hands of the liquidator must be repaid, and the balance also repaid to the bank out of assets subsequently coming into his hands, without deduction of the company's costs in the matter.

**IN RE TEMPLE FIRE AND ACCIDENT ASSURANCE**  
[Co., 129 L. T. Jo. 115—Early, J.]

## (c) Reconstruction.

See Nos. 8, 31, 61, *supra*.

## (d) Supervision Orders.

[No paragraphs in this vol. of the Digest.]

## (e) Surplus Assets.

[No paragraphs in this vol. of the Digest.]

## COMPOSITION WITH CREDITORS.

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## COMPULSORY PURCHASE AND COMPENSATION.

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## I. RIGHT TO TAKE LAND.

## (a) In General.

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## (b) Superfluous Land.

[No paragraphs in this vol. of the Digest.]

## II. COMPENSATION.

## (a) Principle of Assessment.

[No paragraphs in this vol. of the Digest.]

## (b) Injurious Affection.

[No paragraphs in this vol. of the Digest.]

## III. PROCEDURE.

## (a) Generally.

[No paragraphs in this vol. of the Digest.]

## (b) Notice to Treat.

**1. Repudiation as to Part—Withdrawal—Revival of Previous Notice.**—A notice to treat under Michael Angelo Taylor's Act operates as a contract so as to fix the subject-matter of the notice, and the person upon whom it is served must either accept it as a whole or repudiate it altogether. If he repudiates it those serving the notice can withdraw it.

Decision of Eve, J. ([1909] 2 Ch. 287; 78 L. J. Ch. 633; 100 L. T. 925; 73 J. P. 364; 25 T. L. R. 622; 53 Sol. Jo. 561; 7 L. G. R. 733) affirmed.

**WILD v. WOOLWICH BOROUGH COUNCIL**, [1910]

[1 Ch. 35; 79 L. J. Ch. 126; 101 L. T. 58; 74 J. P. 33; 26 T. L. R. 67; 54 Sol. Jo. 64; 8 L. G. R. 203—C. A.]

## (c) Costs.

See also No. 4, *infra*.

**2. Arbitration—Award of Amount Previously Offered—Conditional Offer—Costs—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 34.**—A railway company against whom a claim for compensation was made in respect of the diversion of a footpath intimated to the claimant's solicitor that they proposed to make a new road "and on the understanding that such road will be made, to



**III. Procedure—Continued.**

make your client an offer of £50 in settlement of his claim " :—

**HELD**—that this was not a good offer within sect. 34 of the Lands Clauses Consolidation Act, 1845, and therefore that the claimant, although only awarded £50 in the arbitration proceedings, was entitled to the costs of such proceedings.

*Semble*.—Sect. 34 contemplates nothing more than an offer of a sum of money.

Decision of Phillimore, J. ([1910] 2 K. B. 252; 79 L. J. K. B. 870; 102 L. T. 575; 26 T. L. R. 435) affirmed.

**FISHER v. GREAT WESTERN RY. CO.**, 27 T. L. R. [96; 55 Sol. Jo. 76—C. A.

**(d) Taking Part Only.**

[No paragraphs in this vol. of the Digest.]

**IV. PURCHASE-MONEY IN COURT.**

**3. Payment Out—Persons "Absolutely Entitled"**—*Borough Council—Consent of Local Government Board—Lands Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 18), s. 69—*London Government Act, 1899* (62 & 63 Vict. c. 14), s. 6, sub-s. 5.]—A petition was presented by a borough council asking for payment out of Court to their treasurer of a sum of £2,580, the petitioners claiming that they were persons "absolutely entitled" thereto within the meaning of sect. 69 of the Lands Clauses Consolidation Act, 1854. By sect. 6, sub-sect. 5, of the London Government Act, 1899, "a borough council may, with the consent of the Local Government Board, alienate any land for the time being vested in the council, and the proceeds of the sale of any land sold by the council shall be applied in such manner as the Local Government Board sanction." The consent of the Local Government Board had not been obtained.

**HELD**—that payment out ought to be refused, for, although Warrington, J., had allowed it in the case of *Ex parte Mayor, etc., of Woolwich* ([1908] W. N. 56), there might possibly have been some fact not stated in the note of that case which justified the decision there; but that as it stood it was a decision which ought not to be followed.

*Ex parte Mayor, etc., of Woolwich* ([1908] W. N. 56) overruled.

Decision of Eady, J., affirmed.

**EX PARTE GREAT WESTERN RY. CO., IN RE [GREAT WESTERN RAILWAY (NEW RAILWAYS) ACT, 1905, [1909] W. N. 202; 74 J. P. 21—C. A.**

**4. Payment Out—Costs—Taxation—Form of Order—Exception as to Costs of Litigation between Adverse Claimants—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 80.]—Although, in an order for payment out of funds in court and for payment of the applicant's costs, the words "except such costs if any as are occasioned by litigation between adverse claimants" are omitted, the taxing Master cannot allow such costs, as the Court has no power to give costs otherwise than as provided for by sect. 80 of the Lands Clauses Consolidation Act, 1845, which excludes such costs.**

A local authority under the powers of their special Act and of the Lands Clauses Consolidation Act, 1845, and as promoters, acquired some land for the purposes of their undertaking, and paid the purchase-money into court in consequence of the title to the land being in dispute. The dispute was subsequently settled without actual litigation.

**HELD**—that the costs of the negotiations for the settlement of the dispute as to the title were costs occasioned by adverse litigation within the meaning of sect. 80 of the Act.

**IN RE HOOD AND IN RE WEST HAM CORPORATION ACT, 1902, [1910] W. N. 80; sub nom. IN RE WEST HAM CORPORATION ACT, 1892, HOOD v. WEST HAM CORPORATION, 74 J. P. 179—Neville, J.**

**V. PARTICULAR CLASSES OF UNDERTAKINGS.****(a) Railways.**

See RAILWAYS, Nos. 2, 3.

**(b) Waterworks.**

[No paragraphs in this vol. of the Digest.]

**(c) Housing of the Working Classes Acts.**

[No paragraphs in this vol. of the Digest.]

**(d) Education Authorities.**

[No paragraphs in this vol. of the Digest.]

**CONCEALMENT OF BIRTH.**

See CRIMINAL LAW AND PROCEDURE.

**CONDITIONS OF SALE.**

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**CONFLICT OF LAWS.**

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See also ARBITRATION; COMPANIES, No. 8; DEPENDENCIES, No. 27; INSURANCE, No. 7; JUDGMENT; PRACTICE, No. 1.

**(a) Miscellaneous.**

**1. Mortgage—Land Situated Abroad.**—An English contract to give a mortgage on foreign



**Conflict of Laws—Continued.**

land, although the mortgage has to be perfected according to the *lex situs*, is a contract to give a mortgage which—*inter partes*—is to be treated as an English mortgage and subject to such rights of redemption and such equities as English law regards as necessarily incident to a mortgage.

BRITISH SOUTH AFRICA CO. *v.* DE BEERS  
[CONSOLIDATED MINES, LD., [1910] 2 Ch.  
502; 103 L. T. 4; 26 T. L. R. 591; 54 Sol. Jo.  
679—C. A.]

See S. C. under COMPANIES IX. (a).

2. *Charity—Mortmain—Bequest by English Testator of Mortgages on Real Estate in Ontario—Validity.*—A bequest to charity by a person domiciled in England of mortgages in fee on land in Ontario, being a disposition by will of an interest in land in Ontario forbidden by will of the law of that province, is invalid.

Decision of Eady, J. ([1910] 2 Ch. 333; 79 L. J. Ch. 720; 103 L. T. 127; 26 T. L. R. 516; 54 Sol. Jo. 582) affirmed.

IN RE HOYLES, ROW *v.* JAGG, [1910] W. N.  
[275; 27 T. L. R. 131—C. A.]

3. *Contract Made in Ireland—Agreement that it shall be Construed and Operate as an English Contract—Construction—Forum.*—A contract entered into in Ireland between an Irish corporation and a company carrying on business and having its registered office in England contained a clause that the contract should "in all respects be construed and operate as an English contract and in conformity with English law." An action for damages for breach of the contract had been brought in the Irish Court against the English company, and an *ex parte* order obtained for leave to issue and serve the writ out of the jurisdiction.

HELD—that the writ issued in the Irish High Court and served on the defendants in England should be set aside, on the ground that the parties had agreed to treat the contract as if it had been made in England, and that it was to be construed in conformity with English as distinguished from Irish law.

HELD ALSO—that the effect of such an agreement was not to deprive the Irish Court of all jurisdiction.

LIMERICK CORPORATION *v.* CROMPTON & CO.,  
[LD., [1910] 2 I. R. 416; 43 I. L. T. 49—C. A.,  
Ireland.]

(b) **Domicil.**

See HUSBAND AND WIFE, No. 28.

(c) **Foreign Judgments.**

See BANKERS, No. 8; BANKRUPTCY,  
No. 29.

(d) **Marriage and Divorce.**

See also HUSBAND AND WIFE, Nos. 27, 28.

4. *Divorce—Petition for Nullity—Validity of South Dakota Divorce.*—Where it was satisfied that a decree of divorce obtained against a

husband in one State of America would not be held valid in another State in which the husband was domiciled, nor in the State where a subsequent marriage of the wife took place, the Court held it was not valid in this country.

CASS *v.* CASS (OTHERWISE PFAFF), 102 L. T.  
[397; 26 T. L. R. 305; 54 Sol. Jo. 328—Bigham,  
Pres.]

See S. C., HUSBAND AND WIFE, No. 29.

(e) **Marriage Settlements.**

[No paragraphs in this vol. of the Digest.]

(f) **Wills and Intestacy.**

See EXECUTORS, No. 13.

## CONJUGAL RIGHTS.

See HUSBAND AND WIFE.

## CONSIDERATION.

See CONTRACT.

## CONSPIRACY.

See CRIMINAL LAW AND PROCEDURE;  
TORTS; TRADE AND TRADE UNIONS.

## CONTAGIOUS DISEASES.

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## CONTEMPT AND ATTACHMENT.

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See also PRACTICE, No. 40; SOLICITORS, No. 5.

(a) **Contempt of Court.**

See also HUSBAND AND WIFE, No. 19.

1. *Warrant Issued against Accused Person—Comments Published before Accused brought*

**Contempt and Attachment—Continued.**  
*before Magistrate—Jurisdiction of High Court to Punish for Contempt.*—If statements tending to prejudice or interfere with the due administration of justice are published in reference to the charge brought against a person who is in custody under a warrant, the King's Bench Division has jurisdiction to punish by attachment the person who publishes such statements, notwithstanding that the accused may not, at the time of such publication have been brought before a magistrate.

R. v. CLARKE, *EX PARTE* CRIPPEN, 103 L. T. [636 ; 27 T. L. R. 32—Div. Ct.

### (b) Practice.

**2. Motion for Writ of Attachment—Disobedience to Order Containing Several Directions—Specification of Particular Acts of Disobedience in Notice of Motion and Order.**

Per Farwell, L.J.—Where a writ of attachment or a writ of sequestration is moved for on the ground of disobedience to an order containing a number of directions, the particular breach thereof complained of ought to be specified in the notice of motion, and in the order made thereon.

*Treherne v. Dale* ((1884) 27 Ch. D. 66) distinguished.

HIPKISS v. FELLOWS, 101 L. T. 701—C. A.

**3. Service of Order—Indorsement—Presence in Court of Person against whom Order made—R.S.C. (I.), Ord. 41, r. 4.**—The Court will not attach a person for disobedience to an order of the Court requiring the person to do a given act within a given time, unless a copy of the order, with a proper indorsement, is served upon him in due time, in accordance with the rules.

The fact that the person sought to be attached for disobedience was present in Court when the order was made, is not sufficient to dispense with such service of the order.

CENTURY INSURANCE CO. v. LARKIN, [1910] 1 I. R. 91—Meredith, M.R., Ireland.

## CONTRACT.

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*See also* ACTION, No. 1; AGENCY, Nos. 1, 7; ARBITRATION; BASTARDY; BUILDING CONTRACTS, II.; COMPANIES, Nos. 8, 19; CORPORATIONS; DAMAGES, No. 2; DEPENDENCIES, X.; ELECTRIC LIGHTING, No. 2; GAMING, No. 1; INFANTS; INJUNCTIONS; LOCAL GOVERNMENT, No. 9; MASTER AND SERVANT; MINES, No. 7; MISREPRESENTATION, Nos. 1, 2; MORTGAGE; RATES, No. 7; SALE OF GOODS; SALE OF LAND; SHIPPING; SPECIFIC PERFORMANCE; STOCK EXCHANGE.

FOR COVENANTS IN RESTRAINT OF TRADE, *see* TRADE, IV.

### I. ASSIGNMENT.

**1. Contract to Supply Grease—Whether Personal—Assignability—***Delectus Personæ.*—A firm of oil merchants sold to manufacturers a quantity of black grease. The contract note provided, *inter alia*, that the grease was to be of usual good merchantable quality; that the price was to be £15 15s. per ton on basis of 95 per cent. fatty matter, any excess or deficiency of 95 per cent. to be paid or allowed for; and that the minimum fatty matter was to be 88 per cent. The "terms" stated in the note included the following: "The goods to be sampled by an independent sampler prior to shipment: Analysis to be made by Dr. W. Gray of Liverpool, whose decision shall be final." In acknowledging receipt of the contract note the buyers added—"Please note, however, that all the grease is to be soft and seedy as sample in our possession."

Held—that the contract involved no *delectus personæ*, and so was assignable.

COLE v. C. H. HANDASYDE & Co., [1910] S. C. 68; [47 Sc. L. R. 59—Ct. of Sess.]

### II. BREACH.

*See* DAMAGES, No. 2.

### III. CONSIDERATION.

[No paragraphs in this vol. of the Digest.]

### IV. CONSTRUCTION.

*See* DEPENDENCIES, No. 21.

### V. FORMATION.

**2. Party Contracting to do that which he already Bound to Do—Uncertainty as to Duty at Time of Contract.**—If any party makes a contract for a good consideration to do something which he was already bound to do, though no one was at the time sure that the duty already existed, the other party can sue upon the contract.

WILLIAMS v. O'KEEFE, [1910] A. C. 186; 79 [L. J. P. C. 53; 101 L. T. 762; 26 T. L. R. 144—P. C.]

### V. Formation—Continued.

**3. Covenant—Joint Covenantees—Covenantor also one of Covenantees—Action by Other Covenantee—Objection of Form or of Substance—Trustees—Policy of Assurance.]**—X. having assigned a life policy of assurance to A., B., and C., the trustees of his marriage settlement, he and A. and B., two of the trustees, and each of them thereby covenanted with all three trustees, A., B., and C., but not with them severally, that they, X., A., and B., or some of them, would pay the premiums on the policy. The premiums not having been paid, D., who had become a trustee in the place of C., and in whom with A. and B. the benefit of the covenant had been vested, brought an action against X., A., and B. to enforce the covenant.

**HELD**—that the objection to the validity of the covenant on the ground that two of the covenantors were also covenantees was one of substance and not merely one of form; that no action would lie upon the covenant either at law or in equity; and that the action must be dismissed.

*Rose v. Poulton* ((1831) 2 B. & Ad. 822) considered and distinguished.

*ELLIS v. KERR*, [1910] 1 Ch. 529; 79 L. J. Ch. [291; 102 L. T. 417; 54 Sol. Jo. 307—Warrington, J.

**4. Offer Subject to Formal Contract being Approved—Whether Binding Contract on Acceptance of Offer.]**—An offer was made to purchase the plaintiffs' interest in a property on certain terms "subject to a formal contract to be approved by your solicitors and ourselves on acceptance of the offer, when any minor details can be settled." The plaintiffs' solicitors wrote accepting this offer. No formal contract was ever approved.

**HELD**—that there was no concluded contract between the parties.

*Winn v. Bull* ((1877) 7 Ch. D. 29) followed. *North v. Percival* ([1898] 2 Ch. 128) questioned.

*SANTA FÉ LAND CO., LD. v. FORESTAL LAND, [TIMBER, AND RAILWAYS CO., LD.]*, 26 T. L. R. 534—Neville, J.

### VI. ILLEGALITY.

See also GAMING, Nos. 1, 22.

**5. Agreement to Indemnify Bail—Public Mischief.]**—An agreement between an accused person and his bail by which the latter is to be indemnified against the consequences of the non-appearance of the former is unlawful in that it tends to produce a public mischief; and the parties to such an agreement are guilty of a criminal offence, notwithstanding that it may not be shown that they entered into the agreement with any intent to defeat the ends of justice.

Opinion expressed by Martin, B., in *R. v. Broome* ((1851) 18 L. T. (O.S.) 19) disapproved.

*R. v. PORTER*, [1910] 1 K. B. 369; 79 L. J. [K. B. 241; 102 L. T. 255; 74 J. P. 159; 26 T. L. R. 200—C. C. A.

**6. Public Policy—Husband and Wife—Separation—Covenant by Husband to Pay Sum to Wife if Wife obtained Separation Order—Separation Order Made—Right of Wife to Sue on Covenant.]**—A married woman obtained a separation order against her husband. Subsequently a deed was executed by which, on the return of the wife to cohabitation with the husband, the latter covenanted to treat her properly, and if a separation order was again made between the parties that he would pay her a sum of £150. The husband having thereafter assaulted his wife, she obtained a separation order, and then brought this action to recover the £150 under the covenant of the deed.

**HELD**—that the covenant was not contrary to public policy and that the wife was entitled to recover.

*HARRISON v. HARRISON*, [1910] 1 K. B. 35; [79 L. J. K. B. 133; 101 L. T. 638; 26 T. L. R. 29—Walton, J.

**7. Lease of Flat to Kept Mistress—Action for Rent—Knowledge of Lessor's Agent—Ex Turpi Causa.]**—The plaintiff sued the defendant for arrears of rent due under a lease of a flat. The plaintiff's agent when making the lease knew that the defendant was the kept mistress of H., and supposed that the money for the rent would be supplied by H. to the defendant.

**HELD**—that the plaintiff being aware, through his agent, of the source from which the rent came was by receiving the rent participating in the illegal or immoral gains of the defendant, that, therefore, the doctrine *Ex turpi causa non oritur actio* applied, and that the action was not maintainable.

*Pearce v. Brooks* ((1866) L. R. 1 Ex. 213) applied.

*UPFILL v. WRIGHT*, 130 L. T. 201; 45 L. J. [N. C. 846; *Times*, December 19th, 1910—Div. Ct.

### VII. IMPOSSIBILITY OF PERFORMANCE.

[No paragraphs in this vol. of the Digest.]

### VIII. RECTIFICATION.

[No paragraphs in this vol. of the Digest.]

### IX. STATUTE OF FRAUDS.

See also ESTOPPEL, No. 2.

**8. Not Performable within a Year—Agreement not to Carry on Rival Business for Three Years—Written Contract of Service—Discharge—Verbal Re-engagement.]**—The defendant in March, 1905, signed a written agreement by which he agreed to serve the plaintiff as a general servant in his trade or business of a dairyman. A clause in the agreement provided that the defendant should not, within thirty-six calendar months after quitting or being discharged from the plaintiff's service, carry on or be concerned in a similar business within a four-mile radius. The plaintiff in July, 1906, discharged the defendant, but verbally re-engaged him in April, 1908, on the terms of the old agreement. In February, 1910, the defendant quitted the plaintiff's service and commenced

**IX. Statute of Frauds—Continued.**

business as a dairyman on his own account within the four-mile radius. The plaintiff thereupon brought an action claiming an injunction.

**HELD**—that the agreement by which the defendant was re-engaged came within sect. 4 of the Statute of Frauds, as, although it could be performed by the plaintiff within a year, it was not the intention of the parties that it should be performed within a year, and, therefore, that as it was not in writing it was not enforceable.

*Donellan v. Read* (1832) 3 B. & Ad. 899 and *Smith v. Neale* (1857) 2 C. B. (N.S.) 67 distinguished.

*REEVE v. JENNINGS*, [1910] 2 K. B. 522; 79 [L. J. K. B. 1137; 102 L. T. 831; 26 T. L. R. 576; 54 Sol. Jo. 653—Div. Ct.

**9. Sale of Goods—Contract not to be performed within a Year.**—Sect. 4 of the Statute of Frauds applies to a contract for the sale of goods which is not to be performed within the space of one year from the making thereof. Such a contract is therefore unenforceable unless there is some memorandum or note thereof in writing signed by the party to be charged therewith, or by some person authorised by him.

Decision of *Walton, J.* (26 T. L. R. 644; 54 Sol. Jo. 750) affirmed.

**PRESTED MINERS GAS INDICATING ELECTRIC LAMP Co., LD. v. HENRY GARNER, LD.**, [1910] 2 K. B. 776; 79 L. J. K. B. 1143; 103 L. T. 223; 27 T. L. R. 139—C. A.

**X. UNDUE INFLUENCE.**

[No paragraphs in this vol. of the Digest.]

**CONTRACTOR.**

*See BUILDERS, ETC.*

**CONVERSION.**

*See TROVER AND CONVERSION.*

**CONVERSION AND RECONVERSION IN EQUITY.**

*See TRUSTS, No. 11; WILLS, XXIII.*

**CONVEYANCES.**

*See DEEDS AND OTHER INSTRUMENTS; EQUITY; FRAUDULENT AND VOLUNTARY CONVEYANCES; REAL PROPERTY AND CHATTELS REAL; SALE OF LAND.*

**CONVICTIONS.**

*See CRIMINAL LAW AND PROCEDURE.*

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*See CRIMINAL LAW.*

**COPYHOLDS.**

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**COPYRIGHT AND LITERARY PROPERTY.**

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## Copyright and Literary Property—Continued.

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## I. ASSIGNMENT.

[No paragraphs in this vol. of the Digest.]

## II. BOOKS.

1. *Proceeds of Literary Works—Will—Capital or Income.*—A testator was the author of a number of books, some published during his life and some after his death. In both cases books were published on each of the following terms of remuneration—(1) a single payment, (2) a royalty on sales, and (3) a share of profits. A question arose under the will as to what should be treated as income.

HELD—that royalties and profits derived from the sale of books published before the testator's death fell to be treated as income, but that all sums received by the trustees in respect of works published after the testator's death fell to be treated as part of the capital of the estate.

DAVIDSON'S TRUSTEES *v.* OGILVIE, [1910]  
[S. C. 294; 47 Sc. L. R. 248—Ct. of Sess.]

## III. CATALOGUES.

2. *List of Names—"Stud Book"—Unfair Use of Book in Preparing Another Publication—Competition.*—The lists of names of horses given in the plaintiffs' "Stud Book" held to be the subject of copyright.

An action will lie to restrain the unfair use of one book in the preparation of another, even if there is no likelihood of competition between the two publications.

WEATHERBY & SONS *v.* INTERNATIONAL  
[HORSE AGENCY AND EXCHANGE, LD.,  
[1910] 2 Ch. 297; 79 L. J. Ch. 609; 102  
L. T. 856; 26 T. L. R. 527—Parker, J.]

## IV. DESIGNS.

[No paragraphs in this vol. of the Digest.]

## V. DRAMATIC PIECES.

3. *Right of Representation—Infringement—Sole Licence—Title to Sue.*—The owner of the copyright of a play granted to the plaintiff "the sole licence" to produce the play for twelve months, except in London and suburbs. The plaintiff sued the defendant for having, without his sanction, produced the play at Manchester.

HELD—that, as the plaintiff did not hold an assignment of the acting rights but only a "sole licence," he had no title to sue in his own name.

*London Printing and Publishing Alliance, Ltd. v. Cox* ([1891] 3 Ch. 291) approved.

Decision of Ridley, J. (25 T. L. R. 684) affirmed.

NEILSON *v.* HORNIMAN AND OTHERS, 26 T. L. R.  
[188—C. A.]

## VI. ENCYCLOPÆDIA.

[No paragraphs in this vol. of the Digest.]

## VII. LETTERS.

[No paragraphs in this vol. of the Digest.]

## VIII. MUSIC.

4. *Licence to "Print, Publish, and Sell"—Licensee not Publishing in his Own Name.*—The plaintiff, the owner of a copyright musical composition, granted a licence in general terms to another person "to print, publish, and sell" same.

HELD—that the licensee was not bound under the licence to print and publish the musical composition in his own name.

BOOTH *v.* EDWARD LLOYD, LD., 26 T. L. R.  
549—Neville, J.]

5. *Copyright at Common Law—Musical Composition—Rights of Composer after Publication—Reproduction—Exclusive Performance—Gramophone.*—The composer of the music of a song has no remedy at common law, after publication, against a person who, without authorisation, copies that music on to gramophone records, and publishes and sells such records.

*Boosey v. Whight* ([1900] 1 Ch. 122) applied.  
MONCKTON *v.* GRAMOPHONE CO., LD., [1910]  
[W. N. 277; 55 Sol. Jo. 125—Joyce, J.]

6. *"Musical Work"—Perforated Music Roll—Pirated Copy—Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. 7, c. 15)—Musical Copyright Act, 1906 (6 Edw. 7, c. 36).*—A perforated music roll which is capable, when put on a mechanical instrument, of reproducing the notes of the pianoforte accompaniment of a copyright song is not a "pirated copy of a musical work" within the meaning of the Musical (Summary Proceedings) Copyright Act, 1902, and, therefore, cannot be seized under the provisions of that Act as a pirated copy of a musical work.

*Boosey v. Whight* ([1900] 1 Ch. 122; 69 L. J. Ch. 66; 81 L. T. 571; 16 T. L. R. 82; 48 W. R. 228) followed.

MABE *v.* CONNOR, [1909] 1 K. B. 515; 78 L. J.  
[K. B. 342; 100 L. T. 449; 73 J. P. 109; 25  
T. L. R. 217; 22 Cox, C. C. 29—Div. Ct.]

## IX. PHOTOGRAPHS.

[No paragraphs in this vol. of the Digest.]

## X. PICTURES.

7. *Alterations in Picture made by Buyer without Artist's Consent—Buyer Knowingly Publishing altered Picture with Artist's Name Affixed—Right of Artist to Sue for Penalty and Injunction—Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 7.*—Where the author or maker of a painting, drawing, or photograph has sold or otherwise parted with the possession of the work, any other person who, without the author's or maker's consent, knowingly sells or publishes or offers for sale such work on which alterations have been made commits an offence against s. 7 (4) of the Fine Arts Copyright Act, 1862, although he may not have acted fraudu-



**X. Pictures—Continued.**

lently. Where the work is altered and published or offered for sale the author or maker is entitled to sue for the penalty imposed by s. 7, and to obtain an injunction to restrain future breaches of s. 7 (4).

CARLTON ILLUSTRATORS AND JONES v. COLEMAN & Co., LD., 27 T. L. R. 65—Channell, J.

**XI. REPORTS IN NEWSPAPERS.**

[No paragraphs in this vol. of the Digest.]

**XII. SCULPTURE.**

[No paragraphs in this vol. of the Digest.]

**XIII. VARIOUS.**

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**CORONERS.**

[No paragraphs in this vol. of the Digest.]

**CORPORATIONS.**

See also LANDLORD AND TENANT, No. 24 ;  
LIBEL AND SLANDER, No. 8 ;  
LOCAL GOVERNMENT.

1. *Practice—Sequestration*—"Wilful Disobedience" to Order of Court—R. S. C., Ord. 42, r. 31.]—Where a corporation has been restrained from doing or permitting something, and does or permits that thing, it has "wilfully disobeyed" the order of the Court within the meaning of Ord. 42, r. 31 ; and it is no answer to say that the act of doing or permitting was not contumacious in the sense that there was no direct intention to disobey the injunction, nor is it any answer to say that the acts were done through the carelessness, negligence, or other dereliction of duty on the part of the corporation's servants.

*Rantzen v. Rothschild* ((1865) 30 J. P. 85) followed.

The words "wilfully disobeyed" in the rule are intended to exclude only casual, accidental, or unintentional acts of disobedience.

*Attorney-General v. Walthamstow Urban District Council* ((1895) 11 T. L. R. 533) followed.

STANCOMB v. TROWBRIDGE URBAN DISTRICT COUNCIL, [1910] 2 Ch. 190 ; 79 L. J. Ch. 519 ; 102 L. T. 647 ; 74 J. P. 210 ; 26 T. L. R. 407 ; 54 Sol. Jo. 458 ; 8 L. G. R. 631—Warrington, J.

2. *Lease—Construction—Covenant not to Assign Without Consent—Consent not to be Withheld "from a Respectable and Responsible Person"*—Assignment to Limited Company—Refusal of Consent.]—In a technical document, such as a lease, the word "person," in the absence of any context to limit its meaning, includes a person in law, that is to say, a corporation, and the words "respectable and responsible" are not such a context as to limit the meaning of the word "person" so as to exclude a limited company.

Decision of Neville, J. ([1910] 1 Ch. 754 ; 79 L. J. Ch. 431 ; 102 L. T. 427 ; 26 T. L. R. 387 ; 17 Manson, 220) reversed.

WILLMOTT v. LONDON ROAD CAR CO., LD., [1910] 2 Ch. 525 ; 103 L. T. 447 ; 27 T. L. R. 4 ; 55 Sol. Jo. 873—C. A.

3. *Royal Naval School—Capacity of Infant to be Member of Corporation.*]—An infant is not eligible as a member of the corporation of the Royal Naval School.

IN RE ROYAL NAVAL SCHOOL, SEYMOUR v. ROYAL NAVAL SCHOOL, [1910] 1 Ch. 806 ; 79 L. J. Ch. 366 ; 102 L. T. 490 ; 26 T. L. R. 382 ; 54 Sol. Jo. 407—Eve, J.

See S. C. under INFANTS, V.

4. *University—Charter—Alteration—Consent of Corporation—Act of Majority of Corporation.*]

—Where the Crown has created a corporation by charter it cannot alter or recall the charter except in three cases : (1) where the Crown has in the original charter (or in a subsequent charter made valid by acceptance) expressly reserved power to alter the charter, (2) where the corporation is wholly or partially moribund, (3) where the corporation consents to the alteration.

Whatever can be lawfully done by a corporation can be done by the act of the majority of its members.

The majority of the Corporation of Trinity College, Dublin, proposed to affix the corporate seal of the College to an application to the King for a King's Letter altering the constitution of the corporation without the consent and against the protest of a minority.

HELD—that the Court ought not to, and could not, restrain the action of the majority.

GRAY v. PROVOST, ETC., OF TRINITY COLLEGE, [DUBLIN, [1910] 1 I. R. 370—Ross, J., Ireland.

**CORRUPT PRACTICES.**

See ELECTIONS.

**COSTS.**

See ARBITRATION ; BANKRUPTCY AND INSOLVENCY ; BILLS OF EXCHANGE ; CONTEMPT AND ATTACHMENT ; COUNTY COURTS ; CRIMINAL LAW AND PROCEDURE ; EXECUTION, ETC. ; PRACTICE ; SOLICITORS.

**COUNSEL.**

See BARRISTERS.

**COUNTERCLAIM.**

See SET-OFF AND COUNTERCLAIM.

## COUNTY COURTS.

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See also ADMIRALTY; BANKRUPTCY, IV.;  
LANDLORD AND TENANT, No. 7;  
MASTER AND SERVANT, I. 1 (1), (3).

### I. COURTS, JUDGES, AND OFFICERS.

1. *Right to Jury—Suggestion of Judge to Try Action without Jury.*—*Per* Bucknill, J.—When an action is set down for trial with a jury in a county court, the judge should not suggest that it should be tried without a jury.  
PRACTICE NOTE, [1910] W. N. 98—Div. Ct.

2. *Action against Registrar of County Court in his Own Court—Registrar Acting as Solicitor in Such Court—Right to Costs as Solicitor—Taxation by Registrar of his Own Bill of Costs—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 41, 43, 118.*—The registrar of a county court, sued personally in the Court of which he is registrar, is not debarred by sect. 41 of the County Courts Act, 1888, from appearing to defend himself, and he is entitled upon taxation to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting for himself rendered unnecessary.

Where the plaintiffs in an action elect, under sect. 43 of the County Courts Act, 1888, to sue a registrar of a county court in his own Court, although other Courts are open to them under the section, he is entitled to tax the costs of the action. In such circumstances the case is one of necessity within the rule laid down by *Serjeant v. Dale* ((1877) 2 Q. B. D. 558) that "a judge who has an interest in the result of a suit is disqualified from acting, except in cases of necessity, when no other judge has jurisdiction," since sect. 118 of the County Courts Act, 1888, provides that the costs shall be taxed by the registrar of the Court in which they were incurred.  
*H. TOLPUTT & Co., LD. v. MOLE*, [1911] 1 K. B. [87; [1910] W. N. 252; 103 L. T. 607—Div. Ct.

### II. JURISDICTION AND LAW.

#### (a) General.

3. *Certiorari—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 129.*—A plaint was issued in

the county court of D. claiming that the site of a school erected in 1897 formed part of the glebe, and that the rector of E. was entitled to hand it over to the local education authority as a provided school. The late rector of E., who resigned in 1905, believed the school to be built on his own land.

HELD—that an order must be made to show cause why a writ of *certiorari* should not issue, and a stay directed in accordance with sect. 129 of the County Courts Act, 1888.

*EVANS v. JACKSON*, 74 J. P. 417—Eady, J.

4. *Cancellation of Lease—Equity Jurisdiction of County Court—Value of Property not Exceeding £500—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 67.*—Under sect. 67 of the County Courts Act, 1888, a county court judge has no power under the equity jurisdiction of the county court to try an action for the cancellation of an agreement for a lease of any property which exceeds £500 in value, although the interest in the property actually dealt with by the lease is less in value than that amount.

*ANGEL v. JAY*, 55 Sol. Jo. 140—Div. Ct.

#### (b) Remitted Actions.

See PRACTICE, No. 19.

### III. PROCEDURE.

See also No. 2, *supra*, Nos. 6, 7, 8, *infra*.

#### (a) General.

5. *Right to Jury—Sum Claimed under £5—Action to Enforce Right Relating to Land—County Court Rules, Ord. 22, r. 3—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 101.*—The defendant was the manager and head keeper employed by the tenant of sporting rights over heath land leased from the plaintiff. A fire having broken out on the heath, the defendant sought to check its progress by setting fire to the heather in certain places with the intention of making bare patches and so preventing the fire spreading. In respect of this the plaintiff sued the defendant in the county court, claiming 10s. damages and an injunction.

HELD—that the action was brought to enforce a right relating to land within the meaning of Ord. 22, r. 3, of the County Court Rules, and therefore that the defendant was entitled to have it tried by a jury.

*R. v. SURREY COUNTY COURT JUDGE*, [1910] 2 K. B. 410; *sub nom.* *R. v. FARNHAM AND ALDRSHOT COUNTY COURT JUDGE AND COPE*, 79 L. J. K. B. 802; 103 L. T. 250; 26 T. L. R. 503—Div. Ct.

#### (b) Statutory Defences.

[No paragraphs in this vol. of the Digest.]

### IV. COSTS.

See also No. 1, *supra*; No. 8, *infra*.

6. *Lump Sum Awarded without Taxation—Jurisdiction—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 113, 118.*—A county court judge is not entitled to allow a party a lump sum

**IV. Costs—Continued.**

for costs without taxation, the taxation provided for by sect. 118 of the County Courts Act, 1888, being a condition precedent to the apportionment of the costs between the parties by the judge under sect. 113 of the Act.

GOLDING *v.* SMITH, [1910] 1 K. B. 462; 79 [L. J. K. B. 375; 102 L. T. 19—Div. Ct.

**V. EXECUTION.**

[No paragraphs in this vol. of the Digest.]

**VI. ATTACHMENT OF DEBTS.**

[No paragraphs in this vol. of the Digest.]

**VII. JUDGMENT SUMMONS.**

[No paragraphs in this vol. of the Digest.]

**VIII. APPEALS AND NEW TRIALS.**

*See also* AGENCY, No. 11.

7. *New Trial—Discretion of County Court Judge to Grant New Trials—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 93.]—The power to grant new trials conferred upon the judges of county courts by sect. 93 of the County Courts Act, 1888, is not an absolute power to be exercised upon any grounds which the judge may think fit, but can only be exercised for such reasons in law as a superior Court would deem sufficient for a new trial.

Decision of C. A. ([1909] 2 K. B. 573; 78 L. J. K. B. 840; 101 L. T. 221; 53 Sol. Jo. 615) affirms l.

BROWN *v.* DEAN AND ANOTHER, [1910] A. C. [373; 79 L. J. K. B. 690; 102 L. T. 661; 54 Sol. Jo. 442—H. L.

8. *Stay of Proceedings—Deposit—Security—“Amount Affected by Judgment”—Costs—R.S.C., Ord. 59, r. 14.*]—In Ord. 59, r. 14, “the amount of the money or the value of the property affected by the judgment order or finding appealed from,” which is the limit of the amount that a county court judge may order a deposit of, or security for, to enable an appeal to operate as a stay of proceedings, includes costs as well as the subject-matter of the action.

GRIMSHAW, BAXTER AND ELLIOTT, LD. *v.* [PARKER, [1910] 2 K. B. 161; 79 L. J. K. B. 780; 102 L. T. 825—Div. Ct.

**COURTS.**

COL.

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(c) Liverpool Court of Passage.

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*See also* DEPENDENCIES.

**I. HOUSE OF LORDS.**

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**II. PRIVY COUNCIL.**

1. *Practice—Misdirection—Point not Taken in Court Below.*]—As a general rule neither party to proceedings before the Judicial Committee will be permitted to raise points which have not been taken at any stage in the Court below. Therefore in an action for injuries by negligence, in which contributory negligence was pleaded as a defence, the defendants will not be allowed to take the point that the judge at the trial misdirected the jury on this head when such point was not taken in the grounds of appeal or in argument in the Court below.

Judgment of the Court below reversed on the facts.

WHITE *v.* VICTORIA LUMBER CO., [1910] A. C. [606; 80 L. J. P. C. 38; 103 L. T. 323—P. C.

**III. COURTS OF LOCAL JURISDICTION.**

[No paragraphs in this vol. of the Digest.]

**IV. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**COURTS-MARTIAL.**

*See* COURTS; DEPENDENCIES AND COLONIES; ROYAL FORCES.

**COVERTURE.**

*See* HUSBAND AND WIFE.

**COWSHEDS AND DAIRIES.**

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## CRIMINAL LAW AND PROCEDURE.

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 GAMING, III.; HIGHWAYS, No. 14 ;  
 LIBEL, No. 9 ; MAGISTRATES.

### I. GENERALLY.

#### (a) Capacity to Commit Crime.

1. *Insanity—Murder.*—To establish a defence on the ground of insanity it must be proved that at the time of committing the act the accused did not know the nature and quality of the act he was doing, or if he did know it, that he did not know that what he was doing was wrong.

R. v. SMITH, 26 T. L. R. 614—C. C. A.

#### (b) Evidence.

See also I. (g), and Nos. 19, 58, 72, 80  
 81, 83, 92, 98, 99, 101, *infra*.

2. *Cross-examination of Prisoner as to Character—Imputation on Character of Witness for Prosecution—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1.*—A statement by the prisoner, made under cross-examination, that the police constable who was giving evidence against him was telling lies :

HELD—not to be an imputation upon the police constable's character within the meaning of sect. 1 (f) (ii.) of the Criminal Evidence Act, 1898, so as to entitle the prosecution to question the prisoner as to his previous character.

R. v. Rouse ([1904] 1 K. B. 184) followed.

R. v. GROUT, 74 J. P. 30 ; 26 T. L. R. 60—  
 [C. C. A.]

3. *Cross-examination of Prisoner as to Other Offence—Imputation on Character of Witness for Prosecution—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1.*—The prisoner was indicted for rape upon a girl of 13. He gave evidence on his own behalf, and, in cross-examination, he was asked whether the girl had invented the story, to which he replied that she had not invented it herself ; and on being asked who had, said it was her mother (the prisoner's wife), who was a witness in the case. In answer to further questions the prisoner said his wife wanted to get rid of him, and that he had heard his children say that another man had been coming to the house in his absence. Counsel for the prosecution then said, "You suspect your wife of immoral relations with another man," to which the prisoner replied, "Yes." Thereupon counsel for the prosecution was allowed to put questions to the prisoner under sect. 1 (f) (ii.) of the Criminal Evidence Act, 1898, as to his relations with another girl (who was a witness in the case), which, if established, amounted to a criminal offence, but the prisoner denied those relations. The prisoner was convicted.

HELD—that the answers given by the prisoner in cross-examination were not necessary for the "conduct of the defence," and that, as they



### I. Generally—Continued.

involved imputations on the character of a witness for the prosecution, the questions as to the prisoner's relations with the other girl were properly allowed.

R. v. JONES, [1909] W. N. 218; 74 J. P. 30; [26 T. L. R. 59—C. C. A.]

4. *Cross-examination of Prisoner as to Other Offence—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (f).*—In considering whether, within sect. 1 (f) of the Criminal Evidence Act, 1898, a question put to a prisoner tends to show that he has committed an offence other than that charged in the particular indictment, it must be judged by the light of the other questions put to the prisoner. Any question or series of questions which would reasonably lead the jury to believe that it is being imputed to the prisoner that he has committed another offence tends to show that the prisoner has committed that other offence. Where such a question is improperly put it is the duty of the judge not to wait for any objection from the prisoner's counsel, but to stop such question himself, and if by mischance the question is put it is the duty of the judge to direct the jury to disregard it and not to let it influence their minds.

The second exception in sect. 1 (f) applies to cases where witnesses to character are called or where evidence of the good character of the prisoner is sought to be elicited from the witnesses for the prosecution, but not to mere assertions of innocence or repudiation of guilt on the part of the prisoner, nor to reasons given by him for such assertion or repudiation.

R. v. ELLIS, [1910] 2 K. B. 746; 79 L. J. K. B. [841; 102 L. T. 922; 74 J. P. 388; 26 T. L. R. 535—C. C. A.]

See S. C., No. 67, *infra*.

5. *Prisoner's Evidence—Imputations on Character of Witness for Prosecution—Relevance—Cross-examination of Prisoner—Previous Convictions—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (f).*—The appellant was indicted for housebreaking. The case for the prosecution depended largely on identification. In the course of giving evidence at the trial the appellant stated that he heard a police inspector, who was a witness for the prosecution and who was present when the appellant was paraded at the police station for the purpose of identification by certain witnesses, say to a constable something that sounded like "second," or "it is the second one," and that the constable had then gone out and brought in a witness who at once picked out from amongst those paraded a man standing second from the end, but second from the wrong end. The chairman of quarter sessions held that the appellant's evidence involved an imputation upon the character of the police inspector, and entitled the prosecution to cross-examine the prisoner as to his character. The appellant admitted, in answer to questions in cross-examination, that he had been previously convicted. The appellant's counsel did not in his conduct of the case in any way impugn the character or conduct of the police inspector, or

suggest that his evidence was unreliable and ought not to be believed. The prisoner was convicted.

HELD—that such evidence of the prisoner's character was improperly admitted, and as its admission had probably had the result of convicting the appellant, the conviction must be quashed.

If the nature of a prisoner's defence involves, or if it is conducted so as to involve, the proposition that the jury ought not to believe the prosecutor or a particular witness for the prosecution, on the ground that his conduct outside his evidence in the case makes him an unreliable witness, then it is necessary that the jury should know also the character of the prisoner who is giving evidence and raising that point.

R. v. PRESTON, [1909] 1 K. B. 568; 78 L. J. [K. B. 335; 100 L. T. 303; 73 J. P. 173; 25 T. L. R. 280; 53 Sol. Jo. 322; 21 Cox, C. C. 773—C. C. A.]

6. *Subpœna—Service on Witness not for Purpose of Obtaining Evidence—Jurisdiction to Set Aside Subpœna in Criminal Proceedings.*—The King's Bench Division of the High Court has jurisdiction to set aside a *subpœna* served on a witness in a criminal as well as in a civil proceeding, where it is satisfied that the person so served can give no evidence which can possibly be relevant to any issue to be tried, and that the *subpœna* has been served not for the purpose of obtaining any such relevant evidence, but for other and improper purposes. The setting aside of the *subpœna* does not interfere with the power of the judge at the trial to make an order for the attendance of the witness if he thinks such attendance necessary.

R. v. BAINES AND ANOTHER, [1909] 1 K. B. [258; 78 L. J. K. B. 119; 100 L. T. 78; 72 J. P. 524; 25 T. L. R. 79; 53 Sol. Jo. 101; 21 Cox, C. C. 756—Div. Ct.]

7. *Cross-examination of Fellow Prisoner—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (e).*—As there are no words in sect. 1 (e) of the Criminal Evidence Act, 1898, preventing the cross-examination of one prisoner giving evidence on behalf of another, such a cross-examination is right and proper even though the questions asked have some bearing on the guilt or innocence of the prisoner giving evidence.

R. v. ROWLAND, [1910] 1 K. B. 458; 79 L. J. [K. B. 327; 102 L. T. 112; 74 J. P. 144; 26 T. L. R. 202—C. C. A.]

8. *Statement by One Prisoner Read Over to Co-prisoner—Admissibility.*—The ruling in *R. v. Smith* ((1897), 18 Cox, C. C. 470) went too far if it decided that a statement made by a prisoner is never admissible in evidence against a co-prisoner to whom it is read over unless he admits its truth.

R. v. Bromhead ([1906] 71 J. P. 103) approved.

R. v. THOMPSON, [1910] 1 K. B. 640; 79 L. J. [K. B. 321; 102 L. T. 257; 74 J. P. 176; 26 T. L. R. 252—C. C. A.]



### I. Generally—Continued.

9. *Cross-examination as to Alleged Previous Offence—Criminal Evidence Act, 1898* (61 & 62 Vict. c. 36), s. 1(f)(i).—*Criminal Law Amendment Act, 1885* (48 & 49 Vict. c. 69), s. 5.—C. was indicted under sect. 5 of the Criminal Law Amendment Act, 1885, and the prosecutrix gave evidence that at the time the offence was committed C. told her he had had relations with another servant girl before, and that he hoped the prosecutrix would be as loving to him as that girl had been.

HELD—that C., on giving evidence, could be cross-examined (1) as to whether he had had relations with this other girl, and (2) as to whether this girl was then about fifteen years of age, on the ground that proof that C. had previously committed such an offence (under sect. 5) would be admissible evidence to show that he was guilty of the offence wherewith he was then charged within the meaning of sect. 1 (f) (i) of the Criminal Evidence Act, 1898.

R. v. CHITSON, [1909] 2 K. B. 945; 79 L. J. K. B. [10; 102 L. T. 224; 73 J. P. 491; 25 T. L. R. 818; 53 Sol. Jo. 746—C. C. A.

10. *Death of Witness—Admissibility of Deposition taken before Coroner.*—A coroner's jury returned a verdict of manslaughter against the prisoner. A witness called before the coroner was subsequently called at the preliminary inquiry before the magistrate, but died before his evidence there was completed.

The prisoner had been present at the coroner's inquest, but had not been legally represented, and had not cross-examined the witness in question, although invited to do so by the coroner.

HELD—that on proof of the death of such witness, and that such deposition had been duly signed both by the coroner and by the witness, and that the prisoner was present and had full opportunity of cross-examining such witness, the deposition was admissible at the subsequent trial of the prisoner at the Central Criminal Court, but that such portions thereof as were hearsay or otherwise inadmissible as legal evidence should not be read to the jury.

R. v. Cowle (1907) 71 J. P. 152 approved.  
R. v. BLACK, 74 J. P. 71—Grantham, J.

11. *False Pretences—Evidence of other Acts.*—The appellant was convicted of obtaining a pony and trap by falsely pretending that he wanted them for his wife, who, he said, was an invalid and could not select them herself. At the trial evidence was admitted that the appellant had obtained credit for oats and provender from two other people by the false pretence that he was living at a certain address to which stables were attached.

HELD—that such evidence was improperly admitted, as it only amounted to a suggestion of a generally fraudulent disposition and did not show a systematic course of fraud, that such evidence might have influenced the jury, and that the conviction must therefore be quashed.

R. v. FISHER, [1910] 1 K. B. 149; 79 L. J. [K. B. 187; 102 L. T. 111; 74 J. P. 104; 26 T. L. R. 122—C. C. A.

12. *Accusation of Prisoner in his Presence by Person not Called at Trial—Admissibility—Procedure.*—The statement of a person accusing the prisoner, made in his presence when that person is not called as a witness at the trial, only becomes evidence when the prisoner, by his acceptance or admission of the statement in whole or in part, makes it, or a part of it, his own statement, either by words, conduct, or demeanour,—e.g., by remaining silent on an occasion which demands an answer.

On the trial of a prisoner on indictment, where such evidence of admission appears on the depositions, evidence of the contents of the statement may be given at once. Where such evidence of admission does not appear on the depositions, evidence should first be given of the fact of a statement having been made to the prisoner (*semble*, not of its contents), and the question asked what the prisoner said or did on such a statement being made. If, from what he said or did, an admission may be inferred, then evidence of the contents of the statement may be given.

Where such evidence has been given of the contents of the statement, and of the prisoner's answer, by words or conduct, the proper direction to the jury is that if they come to the conclusion that the prisoner had acknowledged the truth of the whole or any part of the facts stated, they might take the statement, or so much of it as was acknowledged to be true (but no more), into consideration as evidence in the case generally, not because the statement, standing alone, afforded any evidence of the matter contained in it, but solely because of the prisoner's acknowledgment of its truth; but, unless they found as a fact that there was such acknowledgment they ought to disregard the statement altogether.

R. v. NORTON, [1910] 2 K. B. 496; 79 L. J. [K. B. 756; 102 L. T. 926; 74 J. P. 375; 26 T. L. R. 550; 54 Sol. Jo. 602—C. C. A.

13. *Comment by Prosecution on fact that Prisoner's Wife not Called—Identification of Prisoner—Criminal Evidence Act, 1898* (61 & 62 Vict. c. 36), s. 1 (b).—At the trial of a prisoner counsel for the prosecution inadvertently commented on the fact that the prisoner's wife had not been called for the defence. The jury were subsequently told to disregard this comment, and their foreman said that they had disregarded it.

HELD—that the circumstance that such comment had been made by counsel for the prosecution, in contravention of sect. 1 (b) of the Criminal Evidence Act, 1898, did not make the trial a nullity.

Observations as to the identification of prisoners.

R. v. DICKMAN, 74 J. P. 449; 26 T. L. R. [640—C. C. A.

14. *Rebutting Evidence by Prosecution—Admissibility—Discretion of Judge.*—Where evidence which is relevant to the issue is tendered by the prosecution to rebut the case set up by the defence, it is for the judge at the trial to determine in his discretion whether such

**I. Generally—Continued.**

evidence should be allowed to be given or not. Even if the judge exercises his discretion in a way different from that in which the Court of Criminal Appeal would have exercised it, that in itself affords no ground for quashing the conviction of the prisoner. If, however, it is shown in any case that the prosecution has done something unfair which has resulted in injustice to the prisoner the Court of Criminal Appeal may interfere.

R. v. CRIPPEN, [1911] 1 K. B. 149; [1910] [W. N. 243; 27 T. L. R. 69—[C. C. A.

**15. Incest—Evidence of Previous Conduct—Punishment of Incest Act, 1908** (8 Edw. 7, c. 45), ss. 1, 2—*Criminal Appeal Act, 1907* (7 Edw. 7, c. 23), s. 1 (6).—A brother and sister were indicted under the Punishment of Incest Act, 1908, which came into force on January 1, 1909, for offences committed in 1910. At the trial, Scrutton, J., admitted evidence as to the birth of a child in 1908 and the prisoners' conduct during 1907 and 1908, tendered by the prosecution for the purpose of showing the nature of the relations between the prisoners.

HELD—that such evidence was admissible.

Decision of C. C. A. (*sub nom.* R. v. Ball, [1910] W. N. 233) reversed.

DIRECTOR OF PUBLIC PROSECUTIONS v. B. B. [AND C. D., [1910] W. N. 274; 55 Sol. Jo. 139—H. L.

**16. Investigation by Post Office Official Accompanied by Police Officer—Preliminary Caution—Denial by Person Questioned—Subsequent Cross-examination—“Practically in Custody.”**—B. and J. were convicted of demanding money by means of forged documents, and it appeared that they had endeavoured to obtain money in a football competition by B. obtaining an envelope from J., who was employed by the post office, with the postmark on it of a time before the result of the football match was known, the envelope containing a coupon being posted after the result of the match was known. At the trial evidence was admitted that a post office official, known as an investigation clerk, went in company with a detective officer to B., and after the official had cautioned B. that he was not bound to answer anything, but that the answers he made would be submitted to the authorities at the post office, who might determine to prosecute him, and that if they determined to prosecute him then the answers he gave might be used against him at his trial, he proceeded to question him in some detail, and that B. then made admissions tending to show he was guilty. The official said that he had not made up his mind to charge B. before he questioned him, and did not do so until afterwards, when he received instructions from headquarters; the detective who accompanied him said: “I do not think I should have allowed them to go.” B. was in fact arrested after the questions had been put, and the instructions had been received from the post office. The judge at the trial held that at the time the questions were put to B. he was not “practically in custody.”

HELD—that the evidence as to the questions put by the post office official and the admissions by B. was admissible.

R. v. BOOTH AND JONES, 74 J. P. 475—C. C. A.

**(c) Indictment Generally.**

See No. 70, *infra*.

**(d) Jurisdiction.**

[No paragraphs in this vol. of the Digest.]

**(e) Poor Prisoners' Defence Act, 1900.**

[No paragraphs in this vol. of the Digest.]

**(f) Practice Generally.**

See also IV. (g) and Nos. 51, 84, *infra*.

**17. Recognisance—Condition Improperly Imposed—Sentence for Breach of Recognisance—Probation of Offenders Act, 1907** (7 Edw. 7, c. 17), s. 2, sub-s. 2—*Criminal Appeal Act, 1907* (7 Edw. 7, c. 23), s. 3 (c).—The appellant was convicted in January, 1908, of housebreaking and larceny, and was bound over under the Probation of Offenders Act, 1907, the justices imposing, *inter alia*, the condition that the appellant should abstain from intoxicating liquor. In January, 1909, the appellant was sentenced to twelve months' imprisonment for having broken his recognisance, the principal matter relied upon by the prosecution being the frequenting by the appellant of public-houses. Under sect. 2, sub-sect. 2 of the Probation of Offenders Act, 1907, the condition as to abstention from intoxicating liquor can only be inserted in a recognisance when the offence in respect of which a prisoner is bound over is drunkenness or an offence committed under the influence of drink.

HELD—that the condition was improperly imposed, and that the sentence which treated the recognisance as forfeited must be quashed.

HELD ALSO—that the Court could entertain the appeal notwithstanding that the appellant had been convicted before the Criminal Appeal Act, 1907, came into force.

R. v. DAVIES, [1909] 1 K. B. 892; 78 L. J. K. B. [363; 100 L. T. 305; 73 J. P. 151; 25 T. L. R. 279; 21 Cox, C. C. 776—C. C. A.

**18. Recognisance—Prisoner Bound over to Appear for Judgment if Called Upon—Breach of Condition of Recognisance—Power of Quarter Sessions to Sentence Prisoner—Probation of Offenders Act, 1907** (7 Edw. 7, c. 17), ss. 1, 6.—The appellant was convicted at quarter sessions on an indictment for larceny, and was required to enter into a recognisance under sect. 1 (2) of the Probation of Offenders Act, 1907, to appear for sentence when called upon. The recognisance contained conditions, and for a breach of one of these the appellant was subsequently called upon to appear before the quarter sessions for sentence. It was contended on behalf of the appellant that s. 6 (5) of the Probation of Offenders Act, 1907, only applied to persons bound over to appear for conviction and sentence, and did not apply to a person

**I. Generally—Continued.**

bound over to appear for sentence only, and therefore that there was no jurisdiction to pass sentence upon the appellant.

**HELD**—that, apart from any statutory provisions, the quarter sessions had power to bind over the appellant to appear for sentence when called upon, and that that Court had jurisdiction to pass sentence upon the appellant quite apart from the provisions of sect. 6 (5) of the Act of 1907.

**R. v. SPRATLING**, [1911] 1 K. B. 77; [1910] v. W. N. 216; 27 T. L. R. 31; 55 Sol. Jo. 31—C. C. A.

**19. No Evidence against Prisoner in Case for Crown—No Application to Stop Case—Case not Withdrawn from Jury—Evidence against Prisoner in Case for Defence—Conviction.**—J. was indicted for stealing. At the close of the case for the Crown there was no evidence against him, but he made no submission to that effect, and the judge who tried the case did not withdraw it from the jury. J. then called evidence on behalf of the defence, which afforded evidence of his guilt, and he was convicted. Under these circumstances the Court of Criminal Appeal refused to quash the conviction.

*R. v. George* (1908) 73 J. P. 11 followed.

**R. v. JACKSON**, 74 J. P. 352—C. C. A.

**20. Indictment for Wounding with Intent to do Grievous Bodily Harm—Right of Jury to Bring in a Verdict of "Unlawful Wounding"—When Judge should Inform Jury of Right.**—Where by statute a lesser verdict can be returned on an indictment than that charged in the indictment, a judge, in summing up the case to the jury, need not tell the jury of their right to return the lesser verdict, if the evidence in the case is inconsistent with the return of such a verdict.

**R. v. NAYLOR**, 74 J. P. 469—C. C. A.

**21. Murder Trial—Illness of Jurymen—Jurymen leaving Jury-box—Bailiff not sworn.**—During a trial for murder one of the jurymen was taken ill, and it being necessary for him to leave the Court for some time, he was accompanied by an unsworn bailiff and by doctors, who examined him and asked him questions in reference to his condition. There was no suggestion that during the time the jurymen was absent from the Court he was tampered with in any way. After his recovery the trial proceeded.

\* **HELD**—that, the fact that the jurymen was allowed to leave the Court without being in charge of a sworn bailiff did not constitute a mistrial.

**R. v. CRIPPEN**, [1911] 1 K. B. 149; [1910] [W. N. 243; 27 T. L. R. 69—C. C. A.]

**22. Sentence—Other Offences Taken into Consideration.**—The judge, in sentencing a prisoner for an offence, is entitled to, and it is desirable that he should, take into consideration any other charge of the same character which the prisoner admits, even though the prisoner may not have been committed for trial on such other charge.

Where the other offence is not admitted by the prisoner, the judge ought not to take it into consideration. In cases where the other offence is admitted, and there has been a committal in respect of it, the judge should be satisfied that the prosecution consent to it being taken into consideration, and even then he ought not, as a matter of course, to take it into consideration. If there has been a committal in another county, or in respect of a different class of offence, and the prosecution does not consent, the other offence ought not to be taken into consideration, and, even where the prosecution consent, such other offence, if there has been a committal in respect of it in another county, ought not, as a matter of course, to be taken into consideration.

**R. v. MCLEAN**, 27 T. L. R. 138—C. C. A.

**(g) Prevention of Crime.**

**23. Habitual Criminal—Charge—Practice—Proof of Consent of Director of Public Prosecutions—Evidence—Course of Life Previous to Last Conviction—Proof of Age—Deferring Sentence—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.**—The consent of the Director of Public Prosecutions to the insertion of a charge that a prisoner is an habitual criminal may be proved by the person who has been in communication on the subject with the Director of Public Prosecutions, and who states that he has received in the ordinary course a document giving such consent.

The evidence intended to establish that a prisoner is leading persistently a dishonest or criminal life must be brought down to the date of the charge, but it depends upon the circumstances of each case whether evidence as to the prisoner's course of life previous to his last conviction is or is not admissible.

Unless it is obvious to the jury that a prisoner against whom a charge of being an habitual criminal is preferred must have been over the age of 16 at the time of the first of the three convictions founded on by the prosecution, evidence must be given that the prisoner had attained the age of 16 at that time. Such evidence may be given by a prison officer deposing that the prisoner gave his age as stated in the calendar.

Where a prisoner is charged with an offence and is also charged with being an habitual criminal, and pleads guilty to, or is found guilty of, the main charge, it is not necessary that the sentence on that charge should be pronounced before the jury proceed to inquire whether the prisoner is an habitual criminal.

**R. v. TURNER**, [1910] 1 K. B. 346; 79 L. J. [K. B. 176; 102 L. T. 367; 74 J. P. 81; 26 T. L. R. 112; 54 Sol. Jo. 164—C. C. A.]

**24. Habitual Criminal—Practice—Notice of Intention to Insert Charge—Seven Days' Notice—Contents of Notice—Proof—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10 (4).**—The seven days' notice referred to in sect. 10 (4) (b) of the Prevention of Crime Act, 1908, which has to be given to the proper officer of the Court by which an offender is to be tried and to the offender that it is intended to insert in the

### I. Generally—Continued.

indictment a charge of being an habitual criminal means a seven clear days' notice, and there must be evidence of its receipt, not necessarily by the officer of the Court himself, but by someone who can testify to the fact. The notice to the offender must, in addition to specifying the previous convictions, state the other grounds upon which it is intended to found the charge of being an habitual criminal; it is not enough merely to state in the notice that the offender is leading persistently a dishonest or criminal life. If such notice to the offender is not produced at the trial, secondary evidence may be given of its contents.

*R. v. TURNER*, [1910] 1 K. B. 346; 79 L. J. K. B. [176; 102 L. T. 367; 74 J. P. 81; 26 T. L. R. 112; 54 Sol. Jo. 164—C. C. A.]

**25. Habitual Criminal—Trial—Practice—Plea of Guilty to Crime Charged—Swearing of Jury to Try Habitual Criminal Charge—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.**—An indictment for shopbreaking also contained a charge under sect. 10 of the Prevention of Crime Act, 1908, alleging that the prisoner was an habitual criminal. The prisoner pleaded guilty to the shopbreaking, but pleaded not guilty to being an habitual criminal. The jury was sworn to try the latter charge as if for a felony.

**HELD**—that there was no objection to the jury being so sworn, but that it would have been sufficient if they had been sworn as if to try a misdemeanour.

*R. v. TURNER*, [1910] 1 K. B. 346; 79 L. J. [K. B. 176; 102 L. T. 367; 74 J. P. 81; 26 T. L. R. 112; 54 Sol. Jo. 164—C. C. A.]

**26. Habitual Criminal—Trial—Procedure—Separate Trial—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.**—A person charged on an indictment with being an habitual criminal should be tried on that issue separately and not with any other person.

*R. v. BLAKE*, [1910] W. N. 123; 74 J. P. 336—[C. C. A.]

**27. Habitual Criminal—Consent of Director of Public Prosecutions—Notice to Accused—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.**—Where a charge under the Prevention of Crime Act, 1908, of being an habitual criminal is inserted in the indictment against an accused person it is the duty of the clerk of assize or clerk of the peace to satisfy himself before sending the indictment to the grand jury that the consent of the Director of Public Prosecutions to the insertion of such charge has been given. The prosecution need not prove as part of their case that such consent has been given unless the fact is challenged by the accused, in which case the fact may be proved as determined by the Court in *R. v. Turner (supra)*.

The notice served upon an accused person under sect. 10, sub-sect. 4, of the Prevention of Crime Act, 1908, need not, in addition to specifying the previous convictions of the accused, also state other grounds for founding the charge that the accused is leading persistently a dishonest or

criminal life, unless the prosecution intend to rely upon other grounds than the previous convictions.

*R. v. Turner (supra)* considered and explained. *R. v. WALLER*, [1910] 1 K. B. 364; 79 L. J. K. B. [184; 102 L. T. 400; 74 J. P. 81; 26 T. L. R. 142; 54 Sol. Jo. 164—C. C. A.]

**28. Habitual Criminal—Notice of Intention to Insert Charge—Summing up—Convictions not Proved mentioned—Onus of Proof—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.**—In this case a conviction for being an habitual criminal under sect. 10 of the Prevention of Crime Act, 1908, was quashed on the grounds (1) that there was no proof that seven days' notice had been given to the proper officer of the Court that it was intended to insert in the indictment against the appellant a charge of being an habitual criminal; (2) that the judge in summing up the case to the jury had mentioned other convictions than the three convictions proved against him and those just recorded against him; and (3) that the judge had told the jury that the burden of proving that he had attempted to gain an honest livelihood since his last conviction lay upon the appellant.

*R. v. STEWART*, 74 J. P. 246—C. C. A.

**29. Habitual Criminal—Notice of Intention to Insert Charge—Evidence Given of Offences not Stated in Notice—Point not Taken in Notice of Appeal—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10 (4) (b)—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1).**—On the trial of a prisoner for being an habitual criminal evidence was given of certain offences committed by the prisoner since his last release from prison before his re-arrest for the fourth "crime." The notice given to him of an intention to insert in the indictment a charge against him of being an habitual criminal did not state the commission of these offences as one of the "other grounds upon which it is intended to found the charge." No objection was taken to the evidence when it was given. The appellant, by his notice of appeal, did not make the admission of this evidence a ground of appeal.

**HELD**—that no substantial miscarriage of justice had actually occurred, and therefore that the appeal should be dismissed under the proviso to sect. 4 (1) of the Criminal Appeal Act, 1907.

*R. v. MARSHALL*, 74 J. P. 381—C. C. A.

**30. Preventive Detention following Penal Servitude—Right to Appeal against Both Sentences—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 11.**—If a person who has been sentenced to penal servitude and also to preventive detention under the Prevention of Crime Act, 1908, appeals, under sect. 11 of that Act, against the latter sentence, the Court of Criminal Appeal will allow him, without formally obtaining leave, to appeal also against the sentence of penal servitude.

*R. v. SMITH*; *R. v. WESTON*, [1910] 1 K. B. 17; [79 L. J. K. B. 1; 101 L. T. 816; 74 J. P. 13; 26 T. L. R. 23; 54 Sol. Jo. 137—C. C. A.]



## I. Generally—Continued.

**31. Habitual Criminal—No Averment in Indictment—Prevention of Crime Act, 1908** (8 Edw. 7, c. 59), s. 10.]—An indictment framed under sect. 10 of the Prevention of Crime Act, 1908, alleged, following the words of sub-sect. 2 (a), that the prisoner had been three times previously convicted of a crime since he was 16, and that he was leading persistently a dishonest life; but it contained no averment that the prisoner was an habitual criminal.

**HELD**—that the indictment was good, but that, as a matter of pleading, an averment that the prisoner was an habitual criminal ought properly to have been inserted.

*R. v. SMITH; R. v. WESTON*, [1910] 1 K. B. 17; [79 L. J. K. B. 1; 101 L. T. 816; 74 J. P. 13; 26 T. L. R. 23; 54 Sol. Jo. 137—C. C. A.]

**32. Habitual Criminal—Evidence of Accused Leading Persistently a Dishonest or Criminal Life—Prevention of Crime Act, 1908** (8 Edw. 7, c. 59), s. 10.]—Conviction of the prisoner as an habitual criminal quashed, inasmuch as no evidence had been given by the prosecution as to the conduct of the prisoner during the nine months which had elapsed since he last came out of prison, and also because the jury had not been sufficiently directed that it was for them to consider whether in the particular circumstances the previous convictions charged against the prisoner justified them in finding him to be an habitual criminal.

*R. v. KELLY*, 74 J. P. 167; 26 T. L. R. 196—[C. C. A.]

**33. Retrospective Operation of Statute—Prevention of Crime Act, 1908** (8 Edw. 7, c. 59), ss. 10 (1), 19 (2).]—Sect. 10 of the Prevention of Crime Act, 1908, applies to a person convicted of a crime committed between the date of the passing of the Act and the date of its coming into operation, the trial and conviction taking place after the latter date.

*R. v. SMITH; R. v. WESTON*, [1910] 1 K. B. 17; [79 L. J. K. B. 1; 101 L. T. 816; 74 J. P. 13; 26 T. L. R. 23; 54 Sol. Jo. 137—C. C. A.]

**34. Habitual Criminal—No Evidence by Prosecution as to Prisoner's Conduct since last in Prison—No Miscarriage of Justice—Prevention of Crime Act, 1908** (8 Edw. 7, c. 59), s. 10—*Criminal Appeal Act, 1907* (7 Edw. 7, c. 23), s. 4 (1).]—Conviction of a prisoner as an habitual criminal affirmed, notwithstanding that no evidence had been given by the Crown as to the prisoner's conduct between February, 1909, when he came out of prison, and October, 1909, when he was arrested on a fresh charge—no real miscarriage of justice having taken place.

*R. v. ROWLAND*, 102 L. T. 112; 26 T. L. R. 202—[C. C. A.]

**35. Habitual Criminal—Evidence of Accused Leading Persistently a Dishonest or Criminal Life—Prevention of Crime Act, 1908** (8 Edw. 7, c. 59), s. 10.]—Conviction of the prisoner as an habitual criminal quashed, inasmuch as between the expiration of his previous sentence and the

date of the commission of the offence charged there was no evidence to show that he was persistently leading a dishonest or criminal life, the case not being one in which the mere fact of three previous convictions might have been sufficient evidence to support the conviction.

*R. v. Waller (supra)* distinguished.

*R. v. BAGGOTT*, 74 J. P. 213; 26 T. L. R. 266—[C. C. A.]

**36. Habitual Criminal—Evidence of Repute—Prevention of Crime Act, 1908** (8 Edw. 7, c. 59), s. 10 (1), (5).]—Evidence of character and repute on the question of whether the accused is leading persistently a dishonest or criminal life within the meaning of sect. 10, sub-sect. 5 of the Prevention of Crime Act, 1908, may be given by a constable producing from Scotland Yard a list of previous convictions of the accused which he is not able to prove of his own knowledge.

*R. v. FRANKLIN*, 74 J. P. 21; 54 Sol. Jo. 217—[C. C. A.]

**37. Habitual Criminal—Person doing Occasional Work—No Power to Allow Main Conviction to Stand and to Adjourn Inquiry as to Charge of being Habitual Criminal—Prevention of Crime Act, 1908** (8 Edw. 7, c. 59), s. 10.]—A person who is habitually leading a criminal life does not cease to be an habitual criminal merely by the fact that he occupies a small portion of his time in doing some work.

Observations on the Prevention of Crime Act, 1908, viz., that under it there is no power to allow the conviction on the main charge to stand, and to adjourn the inquiry as to whether the prisoner is an habitual criminal where the prisoner suggests that he might be able to disprove that charge if he could obtain an adjournment.

*R. v. JENNINGS*, 74 J. P. 245; 26 T. L. R. 339—[C. C. A.]

**38. Habitual Criminal—Sentence.**]—Where a person is indicted for a crime and also for being an habitual criminal, and pleads guilty to, or is convicted of, the crime, sentence should not be passed upon him in respect thereof until the charge of being an habitual criminal has been tried.

*R. v. WALKER*, 27 T. L. R. 51—C. C. A.]

**39. Habitual Criminal—Sentence—Power of Court to Impose more Severe Sentence in Order to give Sentence of Preventive Detention—Prevention of Crime Act, 1908** (8 Edw. 7, c. 59), s. 10.]—The length of sentence imposed upon a prisoner should depend upon the nature of the offence of which he has been convicted or to which he has pleaded guilty, and the Court cannot impose a more severe sentence than the offence merits in order to give itself the power to pass a sentence of preventive detention.

*R. v. JONES*, [1910] W. N. 259; 27 T. L. R. 108—[C. C. A.]

**40. Sentence—Penal Servitude—Recommendation to Home Secretary to treat last Three Years as Preventive Detention.**]—The prisoner was convicted of larceny and sentenced to six years' penal servitude, the Chairman of Quarter Sessions



**I. Generally—Continued.**

stating that he would recommend the Home Secretary to treat the last three years of the sentence as a period of preventive detention under the Prevention of Crime Act, 1908.

**HELD**—that as the prisoner had not been tried as an habitual criminal, the Chairman of Quarter Sessions had no jurisdiction to take the course that he did, but could only pass a sentence for the offence on its merits, and that the sentence would be reduced to one of eighteen months' hard labour.

*R. v. FLICKER*; *R. v. CHUTER*, 74 J. P. 381; 26 [T. L. R. 504—C. C. A.]

**41. Habitual Criminal—Notice to Prisoner—Previous Convictions—Incorrect Date—Prevention of Crime Act, 1908** (8 Edw. 7, c. 59), s. 10 (4) (b).—A prisoner was charged with being an habitual criminal under the Act, and of three prior convictions stated in the notice given to him under the Act one was alleged to have been at the Belfast Summer Assizes upon July 18th, 1902. It appeared that this date should have been July 21st, 1902.

**HELD**—that the error could be ignored and the notice read as though it charged the conviction for July, 1902, the prisoner not being prejudiced.

*R. v. DOAK*, 44 I. L. T. 107—Palles, L.C.B., [Ireland.]

**42. Habitual Criminal—Notice of Intention to Insert Charge in Indictment—Evidence of a Ground not stated in Notice—Prevention of Crime Act, 1908** (8 Edw. 7, c. 59), s. 10, (4) (b).—A notice to a prisoner given pursuant to s. 10 (4) (b) of the Prevention of Crime Act, 1908, that it was intended to insert in the indictment against him a charge of being an habitual criminal stated as an "other ground" upon which it was intended to found the charge "that between the 14th December, 1909, and the 20th May, 1910 (with the exception of a period from 17th January to 17th February, 1910), you were given various opportunities of earning an honest living; nevertheless you returned to your dishonest and criminal life." On the day of the trial the prosecution tendered what evidence they were aware of in support of the case made by the notice. In addition they gave evidence through a detective inspector, who happened to be in Court and to recognise the prisoner; this officer said he had seen the prisoner associating on numerous occasions with dangerous criminals and acting in concert with them. The prisoner was convicted of being an habitual criminal.

**HELD**—that the notice was not a sufficient one within the meaning of the Prevention of Crime Act, because it was misleading to the prisoner and did not give him a fair opportunity of answering the case made against him at the trial, and that the conviction must be quashed.

*R. v. FAWCETT*, 74 J. P. 444—C. C. A.

**43. Borstal System—Sentence—Report of Prison Governor—Prevention of Crime Act, 1908** (8 Edw. 7, c. 59), s. 1.—In determining whether or not to pass a sentence upon a prisoner of

detention under penal discipline in a Borstal institution, the judge, although he has to consider any report of the prison governor as to the suitability of the prisoner for the Borstal treatment, is not bound to come to the same conclusion as that stated in the report, and in a proper case he may sentence a prisoner to be dealt with under that system, even although the prison governor has reported that the particular prisoner is not suited for treatment under it.

*R. v. WATKINS*, [1910] W. N. 169; *sub nom.* [R. v. WATKINS, R. v. SMALLWOOD, R. v. JONES, 74 J. P. 382; *sub nom.* R. v. WILKINS, SMALLWOOD, AND JONES, 26 T. L. R. 581—C. C. A.]

**44. Borstal System—Sentence—Preventive Detention committed by Home Secretary to Imprisonment with Hard Labour—Appeal—Criminal Appeal Act, 1907** (7 Edw. 7, c. 23), s. 4—*Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), s. 7.—Under sect. 4, sub-sect. 3, of the Criminal Appeal Act, 1907, the Court of Criminal Appeal can only deal with the sentence passed upon a prisoner at his trial.

*Semle*, it cannot directly deal with the commutation by the Home Secretary, under sect. 7 of the Prevention of Crime Act, 1908, of the unexpired residue of a term of preventive detention into a term of imprisonment.

*R. v. KEATING*, [1910] W. N. 198; 103 L. T. [322; 74 J. P. 452; 26 T. L. R. 686—C. C. A.]

**(h) Principals and Accessories.**

[No paragraphs in this vol. of the Digest.]

**(i) Restitution of Property.**

[No paragraphs in this vol. of the Digest.]

**(j) Reward.**

[No paragraphs in this vol. of the Digest.]

**II. SPECIFIC OFFENCES.**

**(a) Miscellaneous Offences.**

*See also* ELECTIONS, No. 3.

**45. Disorderly Behaviour while Drunk—Three Previous Convictions Involving Drunkenness—No Power to Order Imprisonment in Addition to Detention in Inebriate Reformatory—Inebriates Act, 1898** (61 & 62 Vict. c. 60), s. 2 (1).—When a prisoner is convicted upon indictment under sect. 2 (1) of the Inebriates Act, 1898, of an offence mentioned in Sched. I. thereto, and also of three previous convictions for similar offences, and of being an "habitual drunkard," he cannot be sentenced to imprisonment in addition to detention in an inebriate reformatory.

*R. v. BRIGGS*, [1909] 1 K. B. 381; 78 L. J. K. B. [116; 100 L. T. 240; 73 J. P. 31; 25 T. L. R. 105; 53 Sol. Jo. 164; 21 Cox, C. C. 162—C. C. A.]

**46. Disturbing Lawful Meeting for Religious Worship—Defence of Right to Object to Service as Officer of the Church—Defence not put to Jury—Places of Religious Worship Act, 1812** (52 Geo. 3, c. 155), s. 12—*Religious Disabilities Act, 1846*

## II. Specific Offences—Continued.

(9 & 10 Vict. c. 59), s. 4.].—D. was convicted under sect. 12 of the Places of Religious Worship Act, 1812, as extended by sect. 4 of the Religious Disabilities Act, 1846, for wilfully and maliciously disturbing a lawful meeting for religious worship. At the trial the prisoner raised the defence that he was a deacon of the church holding the meeting, and that he was entitled to act in the way he did. This defence was not put to the jury by the judge, and on this ground the conviction was quashed.

R. v. DINNICK, 74 J. P. 32; 26 T. L. R. 74—  
[C. C. A.]

**47. Obstructing Police in Execution of Duty—Deputation—Petition to Member of Parliament—Crowd Collected—Refusal of Deputation to Depart—Prevention of Crimes Amendment Act, 1885 (48 & 49 Vict. c. 75), s. 2.]**—The appellants were convicted of obstructing the police in the execution of their duty. The duty of the police was to keep clear and unobstructed the St. Stephen's entrance to the House of Commons. The appellants having formed a deputation to present a petition to the Prime Minister, which he refused to receive, caused a crowd to be collected about this entrance by refusing to leave it and impeded the police in their efforts to keep it unobstructed.

HELD—that he kept throwing any doubt on the right of a person to present a petition to a member of Parliament, that the conviction was right.

PANKHURST AND ANOTHER v. JARVIS, 101 L. T. 1946; 74 J. P. 64; 26 T. L. R. 118—Div. Ct.

**48. Obstructing Police in Execution of Duty—"Picketing" Official Residence—Crowd Collecting in Street—Refusal of "Pickets" to leave—Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 52—Prevention of Crimes Amendment Act, 1885 (48 & 49 Vict. c. 75), s. 2.]**—The appellants, who were members of the Women's Freedom League, assembled in Downing Street with the object of presenting a petition to the Prime Minister. They were informed that the Prime Minister could not see them, but they waited on for several hours outside his residence, and, in consequence of their presence, a crowd collected. Later, when the Prime Minister drove up, the appellants attempted to force some document upon him. As the appellants, who stated that they were pickets of the league, refused to leave Downing Street, they were arrested and charged with obstructing the police in the execution of their duty. The magistrate having convicted the appellants:

HELD, that the conviction was right.

DESPARD AND OTHERS v. WILCOX AND OTHERS, [102 L. T. 103; 74 J. P. 115; 26 T. L. R. 226—Div. Ct.]

### (b) Abortion.

[No paragraphs in this vol. of the Digest.]

### (c) Assault.

See also PRISONS, No. 1.

**49. Process Server Putting Document Inside Coat of Person Served—Offences Against the Per-**

**son Act, 1861 (24 & 25 Vict. c. 100), s. 42.]**—The respondent, who was the defendant in a county court action, was met in the street by the appellant, who, acting on behalf of the solicitor to the plaintiff in the action, tendered to the respondent an order for discovery which had been made in the action. The respondent declined to accept the document, whereupon the appellant thrust it into the inner fold of the respondent's coat, which was unbuttoned at the time, and as the respondent opened his coat the document fell on to the street, where he left it. On an information preferred by the respondent against the appellant for assault in so touching him, the justices were of opinion that the order of the county court would have been effectually served by the appellant drawing the respondent's attention to the document and by dropping it on to the street in his presence upon his declining to accept it, and that the appellant was not justified in laying hands upon him. They accordingly convicted the appellant.

HELD—that the appellant was entitled to serve the document on the respondent personally, and that as there was no evidence that the appellant touched the respondent more than was necessary to bring the document home to him, the justices were wrong in convicting the appellant.

ROSE v. KEMPTHORNE, 27 T. L. R. 132; 55 Sol. Jo. 126—Div. Ct.

### (d) Bigamy.

[No paragraphs in this vol. of the Digest.]

### (e) Breach of the Peace.

[No paragraphs in this vol. of the Digest.]

### (f) Concealment of Birth.

[No paragraphs in this vol. of the Digest.]

### (g) Conspiracy.

See also TRADE AND TRADE UNIONS, No. 8.

**50. Agreement to Indemnify Bail—Public Mischief.]**—An agreement between an accused person and his bail by which the latter is to be indemnified against the consequence of the non-appearance of the former is unlawful in that it tends to produce a public mischief; and the parties to such an agreement are guilty of conspiracy notwithstanding that it may not be shown that they entered into the agreement with any intent to defeat the ends of justice.

Opinion expressed by Martin, B., in R. v. Broome ((1851) 18 L. T. (o.s.) 19) disapproved. R. v. PORTER, [1910] 1 K. B. 369; 79 L. J. [K. B. 241; 102 L. T. 255; 74 J. P. 159; 26 T. L. R. 200—C. C. A.]

**51. Servant's False Character—Character not given in Writing—Servants' Characters Act, 1792 (32 Geo. 3, c. 56), ss. 2, 3—Common Law Misdemeanour—Sentence of Hard Labour—Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29.]**—Sect. 2 of the Servants' Characters Act, 1792, which relates to the giving of false characters, applies to characters given, or

## II. Specific Offences—Continued.

false pretences made by word of mouth or by conduct as well as in writing.

A conspiracy to commit an offence under this section is a common law misdemeanour and not a conspiracy to cheat or defraud within the meaning of sect. 29 of the Criminal Procedure Act, 1851, and therefore there is no power to impose a sentence of hard labour.

R. v. COSTELLO AND BISHOP, [1910] 1 K. B. [28; 79 L. J. K. B. 90; 101 L. T. 784; 54 Sol. Jo. 13; *sub nom.* R. v. CONOLLY AND COSTELLO, 74 J. P. 15; 26 T. L. R. 31—C. C. A.

### (h) Cruelty to Children.

52. "*Exposing*" Child in a Manner likely to Cause Injury to Child—Children Act, 1908 (8 Edw. 7, c. 67), s. 12.]—To constitute the offence created by sect. 12 of the Children Act, 1908, of exposing a child in a manner likely to cause it unnecessary suffering or injury the exposure need not necessarily consist of the physical placing of the child somewhere with the intent to injure.

R. v. WILLIAMS, 26 T. L. R. 290—C. C. A.

53. *Insuring Life of Infant Taken in to Nurse—Statutory Offence—Paying Premiums due on Policy Effected Prior to Commencement of Act—Children Act, 1908* (8 Edw. 7, c. 67), s. 7.]—Sect. 7 of the Children Act, 1908, provides that a person who undertakes the nursing and maintenance of an infant under seven years of age for reward "shall be deemed to have no interest in the life of the child, . . . and if any such person directly or indirectly insures or attempts to insure the life of such infant he shall be guilty of an offence. . . ."

HELD—that it was not a contravention of the statute for a person, who had undertaken the care of an infant and insured its life prior to the commencement of the Act, to continue to pay the premiums due under the policy after the Act came into force.

GLASGOW PARISH COUNCIL v. MARTINS, 47 [Sc. L. R. 773—Ct. of Justy.

### (i) Disorderly Houses.

[No paragraphs in this vol. or the Digest.]

### (j) Embezzlement.

[No paragraphs in this vol. or the Digest.]

### (k) Falsification of Accounts.

54. *Falsifying Taximeter—Driver of Taxi-cab—"Servant"—Falsification of Accounts Act, 1875* (38 & 39 Vict. c. 24), s. 1.]—The falsification of a mechanical means of recording an account, e.g., a taximeter, is the falsification of an account within sect. 1 of the Falsification of Accounts Act, 1875.

HELD ALSO—that the driver of a taxi-cab belonging to a company was a servant of the company within sect. 1 of the Falsification of Accounts Act, 1875.

R. v. SOLOMONS, [1909] 2 K. B. 980; 79 L. J. [K. B. 8; 101 L. T. 496; 73 J. P. 467; 25 T. L. R. 747—C. C. A.

## (1) Forgery.

55. *Demanding Money—Forged Instrument—Intent to Defraud—Construction—Forgery Act, 1861* (24 & 25 Vict. c. 98), s. 38.]—P. was indicted under sect. 38 of the Forgery Act, 1861, for demanding money from A. P. "under, upon and by virtue of" a forged instrument, with intent to defraud, etc.

HELD—that in order to fall within the terms of the section, the demand for money need not be contained in the forged instrument itself, but may be contained in a separate document referred to by the forged instrument.

ALSO, *semble*, that demanding payment of a debt (even though due) by virtue of a forged instrument is some evidence of an intent to defraud.

R. v. PARKER, 74 J. P. 208—C. C. A.

56. *Telegram—False Name—Intent to Deceive—Post Office (Protection) Act, 1884* (47 & 48 Vict. c. 76), s. 11.]—The Post Office (Protection) Act, 1884, sect. 11, enacts that "every person who forges or wilfully and without due authority alters a telegram or utters a telegram knowing the same to be forged or wilfully and without due authority altered, or who transmits by telegraph as a telegram, or utters as a telegram any message or communication which he knows to be not a telegram, shall, whether he had or had not an intent to defraud, be guilty of a misdemeanour, and shall be liable, on summary conviction, to a fine not exceeding ten pounds, and, on conviction on indictment, to imprisonment with or without hard labour for a period not exceeding twelve months. . . ."

HELD—that in order to constitute an offence under this section there must be an intent to deceive the recipient of the telegram.

*Semble*, if a telegram is sent in a false name with intent to deceive the recipient, it is immaterial whether the contents of the telegram are true or false.

R. v. HORNER, 74 J. P. 216; 22 Cox, C. C. 13— [Bray, J.

### (m) Housebreaking, Burglary, etc.

57. *Entering a Dwelling-house in the Night with Intent to Commit a Felony Therein—Evidence—Larceny Act, 1861* (24 & 25 Vict. c. 96), s. 54.]—The appellant entered a dwelling-house during the night at 9.40 P.M., sat down in an arm-chair before the fire and took his boots off. In ten minutes time, or less, he was discovered, but during that time he had not committed a felony. When discovered he refused to move, saying he was tired, and he made friends with a dog that was set on to him.

HELD—that there was no evidence that the appellant had entered the house with felonious intent.

R. v. PEARSON, 74 J. P. 175—C. C. A.

### (n) Larceny, False Pretences, and Receiving Stolen Goods.

*See also* Nos. 11, 57, *supra*; No. 98, *infra*.

58. *Larceny—Evidence to go to the Jury.*]—The appellant, who had an establishment for breeding

## II. Specific Offences—Continued.

pheasants, was seen to leave his house about 3.15 A.M. on December 27, 1908, having then nothing in his hands. Three hours later he was seen to return carrying a sack which contained eleven tame pheasants. He was thereupon arrested and charged with the larceny of these pheasants. At the trial there was evidence that no one could be traced who had lost any pheasants. Counsel therefore submitted that there was no evidence of a larceny to go to the jury; the case was, however, left to the jury, who convicted the appellant.

HELD, that the conviction must be quashed, as the facts were quite consistent with the appellant's innocence and at the close of the case for the prosecution there was no evidence of larceny to go to the jury.

*R. v. Burton* ((1854), Dears. C. C. 282), distinguished.

*R. v. JOINER*, [1910] W. N. 43; 74 J. P. 200; 26 [T. L. R. 265—C. C. A.]

**59. Larceny—Obtaining Goods on Credit.**—The appellant was indicted for larceny. It was proved that he called on the prosecutor, a baker, and asked to be supplied with bread to sell again to customers; but he stated that he could not pay for the bread until he received the money from the customers. He was asked for, and he gave, his correct name and address, and also gave a genuine reference. It was agreed that he should pay each evening after taking the bread round to his customers. On the following day the prosecutor, who had not verified the reference given by the appellant, supplied the latter with bread, but the appellant never returned with the money. On his arrest, he said "I am not the man." The jury having convicted the appellant, the latter appealed.

HELD, that the conviction must be quashed, there being no evidence of larceny.

*R. v. JONES*, 74 J. P. 168; 26 T. L. R. 226—[C. C. A.]

**60. Larceny—Elopement of Wife with B.—Husband's Goods Found in their Possession—Husband's Ring in B.'s Possession—Proper Direction to Jury.**—A wife eloped with B. A number of articles belonging to the husband were found in the rooms occupied by the wife and B. on their arrest, and B. was then wearing a ring belonging to the husband.

HELD—that on the trial of B. for larceny, there being no count for receiving, the proper direction to the jury was that to convict B. they must be satisfied either that B. knew the ring was the husband's, or that he took part in the original taking of the goods.

*R. v. BLOOM*, 74 J. P. 183—C. C. A.

**61. Larceny—Fictures—Possession Obtained Under Agreement Made with Intent to Steal Fictures—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 31.**—The appellant was found guilty on an indictment under sect. 31 of the Larceny Act, 1861, for having stolen certain lead and zinc piping fixed to certain houses, the property of K. K., and the appellant had agreed that the

latter should put the houses into repair within three months, and that when the repairs were completed K. should grant a lease of the houses for twenty-one years to the appellant, who in the meanwhile was to be deemed a tenant-at-will. According to the prosecution the agreement had been entered into and possession of the houses obtained by the appellant with the fraudulent intention of stealing the piping.

HELD—that the conviction must be affirmed.

*R. v. Munday* ((1799) 2 Leach, C. C. 850) followed.

*R. v. RICHARDS*, [1910] W. N. 268; 45 L. J. N. C. [790—C. C. A.]

**62. Obtaining Credit by Fraud other than False Pretences—Larceny—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 13—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1).**—In this case, where it appeared doubtful whether the evidence supported a conviction for obtaining credit by fraud other than false pretences, the Court dismissed the appeal, acting under sect. 4 (1) of the Criminal Appeal Act, 1907, on the ground that the evidence showed that the appellant had obtained property by fraud or larceny.

*R. v. ARMITAGE*, 74 J. P. 48—C. C. A.

**63. Larceny by Trick—False Pretences—Passing of Property.**—The appellant took two bicycles to an auctioneer and put them in for sale by auction at a reserve price of £2 3s. By a fraudulent arrangement between the appellant and one S., the latter was to bid the reserve price at the auction. S. did so bid, and the bicycles were knocked down to him, but he did not pay the price to the auctioneer. The appellant, taking advantage of the auctioneer's practice to pay over the money for which an article was sold at the auction before he received the money from the bidder, went to the auctioneer and obtained payment of the £2 3s. The appellant was indicted for and convicted of larceny of the £2 3s.

HELD—that the conviction must be quashed, inasmuch as the auctioneer, having intended to part not only with the possession of, but with the property in, the £2 3s., the offence was not larceny.

*Semble*, the offence committed was obtaining the money by false pretences.

*R. v. FISHER* (No. 2), 103 L. T. 320; 74 J. P. [427; 26 T. L. R. 589—C. C. A.]

**64. Larceny from the Person—Simple Larceny—Asportation.**—The prisoner put his hand into the prosecutor's pocket, got hold of his purse, and pulled it up to the edge of the pocket when the corner caught on a belt worn by the prosecutor. The prosecutor at that moment grasped the purse and put it back.

HELD—that the prisoner was guilty of simple larceny and not of larceny from the person.

*R. v. TAYLOR*, 27 T. L. R. 108—C. C. A.

**65. Obtaining Credit under False Pretences or by means of Fraud—Intention—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 13, sub-s. 1.**—An intention to defraud is an essential ingredient in the



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offence created by sect. 13, sub-sect. 1, of the Debtors Act, 1869.

R. v. BROWNLOW, 74 J. P. 240; 26 T. L. R. 345  
[—C. C. A.]

**66. False Pretences—Evidence of other Acts.**—The appellant was convicted of obtaining a pony and trap by falsely pretending that he wanted them for his wife, who, he said, was an invalid and could not select them herself. At the trial evidence was admitted that the appellant had obtained credit for oats and provender from two other people by the false pretence that he was living at a certain address to which stables were attached.

HELD—that such evidence was improperly admitted, as it only amounted to a suggestion of a generally fraudulent disposition and did not show a systematic course of fraud, that such evidence might have influenced the jury, and that the conviction must therefore be quashed.

R. v. FISHER (No. 1), [1910] 1 K. B. 149; 79 L. J. [K. B. 187; 102 L. T. 111; 74 J. P. 104; 26 T. L. R. 122—C. C. A.]

**67. False Pretences—Evidence—Questions Suggesting Other Frauds—Admissibility—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (f).**—E. was charged with obtaining money from D. by false pretences in respect of various articles of china sold by him to D. It was alleged by the prosecution that all the articles referred to in the indictment were sold by E. to D. under an agreement that he was to charge D. the cost price plus 10 per cent. profit or commission; and the false pretence alleged was that E. represented to D. that the cost was much in excess of the real cost. Questions were put to E. in cross-examination as to other transactions, suggesting that he had obtained money from D. by alleging that certain china figures were genuine pieces of old Dresden china, whereas he must have known that they were not.

HELD—that the questions were improperly allowed, inasmuch as they tended to show that the appellant had committed an offence other than that with which he was charged.

R. v. Fisher (*supra*) followed.

R. v. ELLIS, [1910] 2 K. B. 746; 79 L. J. K. B. [841; 102 L. T. 922; 74 J. P. 388; 26 T. L. R. 535—C. C. A.]

See S. C. under I. (b), *supra*.

**68. False Pretences—Railway Ticket—“Chattel”**—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88.—A railway passenger ticket is a “chattel” within the meaning of sect. 88 of the Larceny Act, 1861, and a person may be convicted of obtaining it from a railway company by false pretences, although he intends to deliver it up to the company on the completion of his journey.

R. v. Boulton ((1849) 1 Den. 508) followed.

R. v. CHAPMAN, [1910] W. N. 131; 74 J. P. 360  
[—C. C. A.]

**69. False Pretences—Attempt to Obtain Money—False Balance Sheet—Employment in Return**

for Money for Investment.]—L. suggested to S., and also to I., that they should apply for an appointment as local representative of a company which was about to take over the business of a firm of which he represented himself as a partner, and told them that whoever got the appointment would make £600 a year, but would have to invest £100 in the company. When L. made these proposals to S. and I., he produced on each occasion a balance sheet showing considerable profit, (which he falsely pretended to be his firm's last year's balance sheet. L. was convicted of attempting to obtain by false pretences the sum of £100 from S. and from I.

HELD—that L.'s acts amounted to an attempt to obtain money by false pretences.

R. v. LAITWOOD, [1910] W. N. 122—C. C. A.

**70. Receiving Stolen Goods—Indictment—Misdemeanour at Common Law—Facts Proved Amounting to Felony—Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), ss. 12, 24—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 91.**—The appellants were indicted for that they “unlawfully did receive and have” certain goods “well knowing the same goods and chattels to have been feloniously stolen, taken, and carried away against the form of the statute in such case made and provided and against the peace of our said Lord the King, his crown and dignity.” The indictment contained no allegation that the receiving was felonious. The original stealing was felonious, as alleged.

HELD—that the words in the indictment “against the form of the statute in such case made and provided” could be rejected as surplusage; that the indictment was a good indictment for a misdemeanour at common law; and that, although the facts given in evidence amounted in law to a felony, the appellants were not entitled to be acquitted as the case came within sect. 12 of the Criminal Procedure Act, 1851.

R. v. GARLAND AND ANOTHER, [1910] 1 K. B. [154; 79 L. J. K. B. 239; 102 L. T. 254; 74 J. P. 135; 26 T. L. R. 130—C. C. A.]

**71. Receiving Stolen Goods—Found in Possession of Stolen Goods—Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 19.**—To satisfy the words “has been found in his possession” in sect. 19 of the Prevention of Crimes Act, 1871, it is not necessary that the goods should be found in the prisoner's possession at the very moment of his arrest.

R. v. ROWLAND, [1910] 1 K. B. 458; 79 L. J. [K. B. 327; 102 L. T. 112; 74 J. P. 144; 26 T. L. R. 202—C. C. A.]

**72. Receiving Stolen Goods—Found in Possession of Stolen Goods—Evidence—Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 19.**—On the trial of a prisoner for receiving goods knowing them to be stolen, it was proposed under sect. 19, sub-sect. 1, of the Prevention of Crimes Act, 1871, to call evidence that there was found in the possession of the prisoner other property stolen by the same thief within the preceding period of twelve months, but parted



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with by the prisoner by selling it or pawning it before the property the subject of the indictment had been found in his possession.

**HELD**—that the proposed evidence was inadmissible, as it was necessary, as a preliminary to calling such evidence, to prove that the property stolen within the preceding twelve months had been found in the actual physical possession of the prisoner at the time of his arrest, or at the time when it was alleged the other stolen property was found upon him.

*R. v. Drage* ((1878), 14 Cox C. C. 85) and *R. v. Carter* ((1884), 12 Q. B. D. 522) followed.

*R. v. Rowland* (*supra*) considered.

*R. v. HARDY*, 74 J. P. 396—Cent. Crim. Ct.

### (o) Malicious Damage.

**73. *Bonâ fide Claim of Right—Removal of Notice-Boards — Jurisdiction of Justices — Malicious Damage Act***, 1861 (24 & 25 Vict. c. 97), s. 52.]—The respondents were summoned under sect. 52 of the Malicious Damage Act, 1861, for wilful and malicious damage to certain notice-boards the property of the appellants. The notice-boards had been fixed by the appellants, with the permission of the Mitcham Parish Council, to certain lamp-posts on the highways crossing Mitcham Common. The notices were as follows: “Croydon Rural District Council. Persons are requested to refrain from playing golf on or across the public highway.” The lamp-posts were the property of the Mitcham Parish Council, and the roads were highways repairable by the inhabitants at large. The respondents had acted on the instructions of the Prince’s Golf Club Company (Limited), who had obtained from the trustees for the conservators of the common a licence for thirty years to play golf on the common for an annual payment of £250. The respondents contended that they had acted in the exercise of a *bonâ fide* claim of right and under a fair and reasonable supposition that they had a right to do the acts complained of.

**HELD**—that as the lamp-posts were not the property of the trustees, and as the notices did not amount to a nuisance giving the respondents the right to abate it, the right claimed by the respondents was one not recognised by the law, and, therefore, the justices’ jurisdiction was not ousted.

**CROYDON RURAL DISTRICT COUNCIL v. COWLEY [AND ANOTHER]**, 100 L. T. 441; 73 J. P. 205; 25 T. L. R. 306; 22 Cox, C. C. 22; 7 L. G. R. 603—Div. Ct.

### (p) Manslaughter.

[No paragraphs in this vol. of the Digest.]

### (q) Murder.

*See also* Nos. 1, 21, *supra*.

**74. *Attempt to Murder—Act Done with Intent to Murder—Sentence—Criminal Procedure Act***, 1851 (14 & 15 Vict. c. 100), s. 9—*Offences Against the Person Act*, 1861 (24 & 25 Vict. c. 100), ss. 11–15.]—The completion or attempted completion

of one of a series of acts intended by a person to result in the killing of another person is an attempt to murder, even although the completed act would not, unless followed by the other acts, result in killing. There cannot be an act done with intent to murder without its being an attempt to murder.

The group of sections—11 to 15—of the *Offences Against the Person Act*, 1861, headed “Attempts to murder,” is a code embracing all attempts to murder. Therefore, where a person is indicted for murder, and the jury, acting under sect. 9 of the *Criminal Procedure Act*, 1851, find him guilty of an attempt to murder, he is liable to the punishment provided for attempted murder by the *Offences Against the Person Act*, 1861.

*R. v. Connell* ((1853) 6 Cox, C. C. 178) distinguished. Observations of Kennedy, J., in *R. v. Linneker* ([1906] 2 K. B. 99) questioned.

*R. v. WHITE*, [1910] 2 K. B. 124; 79 L. J. K. B. [854; 102 L. T. 784; 74 J. P. 318; 26 T. L. R. 466; 54 Sol. Jo. 523—C. C. A.

### (r) Obscene Books.

[No paragraphs in this vol. of the Digest.]

### (s) Perjury.

*See also* **DEPENDENCIES**, No. 19.

**75. *Arbitration Proceedings in County Court under Workmen’s Compensation Act***, 1906—*Judicial Proceedings*.]—Arbitration proceedings before a county court judge under the *Workmen’s Compensation Act*, 1906, are judicial proceedings, and therefore a witness who in such proceedings gives false evidence on a material question may be indicted for perjury.

*R. v. CROSSLEY*, [1909] 1 K. B. 411; 78 L. J. [K. B. 299; 100 L. T. 463; 73 J. P. 119; 25 T. L. R. 225; 53 Sol. Jo. 214; 22 Cox, C. C. 40.—C. C. A.

### (t) Treason.

[No paragraphs in this vol. of the Digest.]

### (u) Vagrancy.

**76. *Incorrigible Rogue—Previous Convictions as “Idle and Disorderly Person”—Vagrancy Act***, 1824 (5 Geo. 4, c. 83), ss. 3, 4, 5—*Criminal Appeal Act*, 1907 (7 Edw. 7, c. 23), ss. 4, 19, 20.]—On August 12th, 1905, the appellant was convicted at petty sessions of being an “idle and disorderly person” within sect. 3 of the *Vagrancy Act*, 1824. On December 10th, 1907, he was again convicted at petty sessions of the same offence under the same section. On October 24th, 1908, he was convicted at petty sessions of being an incorrigible rogue in that he “did unlawfully wander abroad to beg alms, the said [appellant] having been twice previously convicted of being an idle and disorderly person,” and was committed to quarter sessions, where he was sentenced to twelve months’ imprisonment with hard labour.

**HELD**—that the conviction must be quashed, as under sect. 5 of the *Vagrancy Act*, 1824, before a person can be convicted as an incorrigible rogue, there must be evidence that he has

## II. Specific Offences—Continued.

been previously convicted as a rogue and vagabond, and there was no evidence upon the face of the record that the appellant had been so convicted.

R. v. JOHNSON, [1909] 1 K. B. 439; 78 L. J. [K. B. 290; 100 L. T. 464; 73 J. P. 135; 25 T. L. R. 229; 53 Sol. Jo. 288; 22 Cox, C. C. 43—C. C. A.

### (v) Women and Girls, Offences against.

See also No. 15, *supra*; No. 99, *infra*.

**77. Indecent Assault on Girl under Sixteen—Summary Conviction—Right of Appeal—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 12, 19—Children Act, 1908 (8 Edw. 7, c. 67), ss. 33, 128 (2).—**Where a defendant, who is charged with an indecent assault upon a female under the age of sixteen years, consents to be dealt with summarily under sect. 12 of the Summary Jurisdiction Act, 1879, and sect. 128 of the Children Act, 1908, and is convicted and sentenced to imprisonment without the option of a fine, he has no right of appeal either under sect. 19 of the Summary Jurisdiction Act, 1879, or under sect. 33 of the Children Act, 1908.

R. v. DICKINSON, *EX PARTE* DAVIS, [1910] 1 [K. B. 469; 79 L. J. K. B. 256; 102 L. T. 48; 74 J. P. 76—Div. Ct.

**78. Procurement—“Another Person, to Wit, Himself”—Indictment—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 2 (1)—Interpretation.**—An indictment framed under sect. 2 of the Criminal Law Amendment Act, 1885, charged C. with unlawfully attempting to procure D. G., a girl of the age of thirteen years, to have unlawful carnal connection with another person, to wit, himself, the said C.

HELD—that the words of the section “with any other person or persons” must be interpreted to mean “with some person other than the defendant himself”; and that the indictment disclosed no offence in law, and must be quashed.

R. v. C., 74 J. P. 208—C. C. A.

**79. “Seduction”—Person Having Custody of Girl under the Age of Sixteen—Encouraging Seduction of Girl—Children Act, 1908 (8 Edw. 7, c. 67), s. 17.**—The word “seduction” in sect. 17 of the Children Act, 1908, is used in its popular sense of inducing a girl to part with her virtue for the first time.

R. v. F. MOON AND E. MOON, [1910] 1 K. B. [818; 79 L. J. K. B. 505; 74 J. P. 231—C. C. A.

[But see now the Children Act (1908) Amendment Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 25).]

**80. Evidence—Carnal Knowledge of Girl under Sixteen—Corroboration—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5.**—On a prosecution under sect. 5 of the Criminal Law Amendment Act, 1885, for unlawfully and carnally knowing a girl of or above the age of thirteen years and under the age of sixteen years,

the judge told the jury that they were at liberty, if they thought it right, to act on the evidence of the prosecutrix alone without corroboration; but that they should scrutinise the case with great care and be quite satisfied that the case for the Crown was made out and that they ought to act upon the girl's evidence.

HELD—that this direction was right.

R. v. GRAHAM, 74 J. P. 246—C. C. A.

**81. Evidence—Rape—Defence of Consent—Appeal Allowed on Facts.**—The Court on the facts of the case quashed a conviction for rape, holding that there was not sufficient evidence before the jury to justify a verdict of guilty, on the grounds (1) that the appellant had from the first admitted that he had had connection with the prosecutrix, but alleged that he did so with her consent; (2) that although when the warrant was read over to him he said “Yes,” yet it was plain he treated the word “rape” as if it meant the having carnal connection with a woman; (3) that although the prosecutrix said she had struggled, there were no marks of bruising on her body five days later; and (4) that there was an inconsistency in the girl's evidence at the police court and on trial.

R. v. BRADLEY, 74 J. P. 247—C. C. A.

**82. Rape—“Idiot”—“Imbecile”—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), ss. 5 (2), 9.**—Upon an indictment for rape upon a woman of defective understanding, and subject to delusions and epileptic fits, the prosecution invited the jury, under sect. 9 of the Criminal Law Amendment Act, 1885, if not satisfied that the defendant was guilty of rape, to convict him of unlawfully and carnally knowing an imbecile woman under sect. 5 (2) of the Act.

HELD—that under sect. 5 (2) of the Act an idiot is a person who from birth has had no mind, and that an imbecile woman is a woman who, having once had a mind of some kind, owing to decay or to other mental or physical causes, ceases to have a mind.

R. v. F., 74 J. P. 384—Grantham, J.

**83. Evidence—Offence Depending on Age of Girl—Proof of Age.**—A person was charged with an offence toward a girl, whose age was stated in the complaint to be eleven years. At the trial the girl deposed to the fact that she was eleven years of age, but no further evidence was given in corroboration thereof. The accused was convicted.

HELD—that the age of the girl, which was crucial to the constitution of the offence, had not been proved by the evidence adduced and that the conviction must be quashed.

LOCKWOOD v. WALKER, [1910] S. C. (J.) 3; 47 [Sc. L. R. 155; 6 Adam. 124—Ct. of Justy.

**84. Rape—Practice—Defence by Counsel.**—Prisoners charged with rape should always be defended by counsel.

PRACTICE NOTE, [1910] W. N. 206; *sub nom.* [R. v. GILLINGHAM, 74 J. P. N. C. 424—C. C. A.

### III. CONVICTS' PROPERTY.

[No paragraphs in this vol. of the Digest.]

### IV. CRIMINAL APPEALS.

See also I. (g) and No. 19, *supra*; EXTRA-DITION, No. 2.

#### (a) Generally.

**85. Mistrial**—*Writ of venire de novo*.]—In the course of the argument in this case, Lord Alverstone, C.J., expressed the opinion that where there has been a "mistrial" within the meaning of the cases, the Court of Criminal Appeal have the power formerly possessed by the Court for the Consideration of Crown Cases Reserved of issuing a writ of *venire de novo*. As the Court were of opinion that in this case there had been no mistrial, the point was not fully argued, counsel for the Crown not being called upon, and was not decided.

R. v. DICKMAN, 74 J. P. 449.

**86. Prerogative of Mercy**—*Reference by Home Secretary—No Appeal Otherwise against Conviction—Conviction at Petty Sessions as an Incurable Rogue—Sentenced at Quarter Sessions—Vagrancy Act, 1824* (5 Geo. 4, c. 83), s. 5—*Criminal Appeal Act, 1907* (7 Edw. 7, c. 23), ss. 19, 20 (2).]—Under sect. 20, sub-sect. 2, of the Criminal Appeal Act, 1907, a person convicted at petty sessions as an incurable rogue, and sent to be dealt with at quarter sessions under sect. 5 of the Vagrancy Act, 1824, cannot appeal to the Court of Criminal Appeal against the conviction at petty sessions, but only against the sentence imposed by quarter sessions. But by sect. 19 of the Criminal Appeal Act nothing in the Act is to affect the prerogative of mercy, and the Secretary of State can on consideration of any petition for mercy with regard to the conviction of a person on indictment refer the whole case to the Court of Criminal Appeal.

R. v. JOHNSON, [1909] 1 K. B. 439; 78 L. J. K. B. [290; 100 L. T. 464; 73 J. P. 135; 25 T. L. R. 229; 53 Sol. Jo. 288; 22 Cox, C. C. 43—C. C. A.

#### (b) Appeal against Sentence.

See also Nos. 17, 22, 38, 39, 40, 51, *supra*.

**87. Habitual Drunkard Convicted Four Times of Drunkenness within Twelve Months—No Power to Impose Imprisonment as well as Detention—Inebriates Act, 1898 (61 & 62 Vict. c. 60); s. 2 (1).]—A person convicted on indictment under sect. 2 (1) of the Inebriates Act, 1898, can only be sentenced to detention for a term not exceeding three years in any certified inebriate reformatory, the managers of which are willing to receive him, as provided by that section, and not to imprisonment as well.**

R. v. BRIGGS, [1909] 1 K. B. 381; 78 L. J. K. B. [116; 100 L. T. 240; 73 J. P. 31; 25 T. L. R. 105; 53 Sol. Jo. 164; 21 Cox, C. C. 762—C. C. A.

**88. Preventive Detention following Penal Servitude—Right to Appeal against Both Sentences—**

*Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), s. 11.]—If a person who has been sentenced to penal servitude and also to preventive detention under the Prevention of Crime Act, 1908, appeals, under sect. 11 of that Act, against the latter sentence, the Court of Criminal Appeal will allow him, without formally obtaining leave, to appeal also against the sentence of penal servitude.

R. v. SMITH; R. v. WESTON, [1910] 1 K. B. 17; [79 L. J. K. B. 1; 101 L. T. 816; 74 J. P. 13; 26 T. L. R. 23; 54 Sol. Jo. 137—C. C. A.

**89. Ticket-of-Leave—Remanet of Last Sentence—Proper Form of Sentence—Penal Servitude Act, 1864 (27 & 28 Vict. c. 47), s. 9—*Criminal Appeal Act, 1907* (7 Edw. 7, c. 23), ss. 3, 4 (3), 19 (a).]—Judges in passing sentence on a prisoner should not refer to the *remanet* of the prisoner's last sentence by ordering that the new sentence should be served after or concurrently with the *remanet*, as by sect. 9 of the Penal Servitude Act, 1864, the prisoner must serve his *remanet* after serving the fresh sentence that is passed upon him. But where a judge has done so, the Court of Criminal Appeal will vary the sentence to give effect as far as possible to the total length of sentence the judge at the Court of trial wished to impose.**

Where the Home Secretary refers a case to the Court of Criminal Appeal under sect. 19 of the Criminal Appeal Act, 1907, with regard to sentence, it is not open to the petitioner to appeal against his conviction; in such a case, the Court has the power to vary the sentence under sect. 4 (3) of the Criminal Appeal Act, 1907.

R. v. HAMILTON ((1908) 72 J. P. N. C. 365; Butterworths' Yearly Digest, 1908, col. 149) considered.

R. v. SMITH; R. v. WILSON, [1909] 2 K. B. [756; 79 L. J. K. B. 4; 101 L. T. 126; 73 J. P. 407—C. C. A.

**90. Remanet of Imprisonment from Previous Sentence.**]—In deciding what sentence should be imposed on a convicted prisoner who has a *remanet* of imprisonment outstanding against him from a previous sentence it is quite right that the Court should take into account the *remanet* of imprisonment which the prisoner has to serve as a statutory result of his conviction.

R. v. DORRINGTON, 74 J. P. 392—C. C. A.

**91. Concurrent Sentences—Hard Labour and Penal Servitude.**]—The appellant was convicted of forgery and false pretences, and was sentenced to seven years penal servitude and twelve months hard labour, the two sentences to run concurrently.

HELD—that the sentence of twelve months hard labour should be reduced to a nominal sentence of one day, as it was doubtful whether it was present to the mind of the Judge that the effect of the sentences imposed would be that the appellant would have to spend a longer period in hard labour at the commencement of his sentence than would otherwise be the case, and would not be able to earn as many remission marks.

R. v. BRUCE, 27 T. L. R. 51—C. C. A.

## IV. Criminal Appeals—Continued.

**92. Evidence at Trial as to Good Character—No Evidence of Bad Character Culled—Unproved Accusations after Conviction—Bastardy Order—Effect on Sentence.**—A prisoner was tried at quarter sessions on an indictment for larceny, and evidence as to character was given on his behalf, while no evidence as to character was called by the prosecution. The prisoner having been convicted, the chairman at first intended to release him on his own recognisances, being under the impression that he was of good character. But evidence was then given by the police as to a bastardy order which had been made against the prisoner, who was married, and which the latter admitted, and as to previous accusations against him of theft and other offences, the truth of which he denied. He was sentenced to nine months' imprisonment without hard labour.

**HELD**—that there was no ground for interfering with the sentence, as the chairman had not punished the prisoner for unproved offences, but had merely declined to treat the prisoner in an exceptional way.

R. v. BRIGHT, [1910] W. N. 85—C. C. A.

**93. Increase of Sentence by Court—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (3).**—A prisoner convicted of felonious shooting with intent to murder and sentenced to twelve years' penal servitude, applied for leave to appeal against the sentence. Leave was granted on the ground that the sentence was inadequate. At the hearing of the appeal the appellant, who was not represented by counsel, was warned that if he persisted in the appeal he would run the risk of an increase of sentence. He, however, proceeded to argue his appeal, which was dismissed. The Court increased the sentence from twelve to fifteen years' penal servitude.

R. v. SIMPSON, 74 J. P. N. C. 533—C. C. A.

## (c) Appeal on Facts.

See No. 81, *supra*.

## (d) Bail.

**94. Conviction Quashed—Proposed Appeal to House of Lords—Custody of Defendant pending Appeal—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), ss. 1 (6), 4.**—Where the Court of Criminal Appeal quash a conviction and it is proposed by the prosecution to apply to the Attorney-General for a certificate under sect. 1 (6) of the Criminal Appeal Act, 1907, that the decision involves a point of law of exceptional public importance with view to an appeal to the House of Lords, the Court has no power under the Act either to hold the defendant to bail or to keep him in custody pending an appeal.

R. v. BALL, [1910] W. N. 233—C. C. A.

## (e) Fresh Evidence.

See also No. 101, *infra*.

**95. Statements Communicated to Home Secretary pending Appeal—Forwarded to Court—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 19 (a).**—

The fact that a communication has been sent to the Home Secretary in connection with a petition which is referred by him to the Court of Criminal Appeal under sect. 19 (a) of the Criminal Appeal Act, 1907, does not make that statement evidence in the case; but the Court may look at such communications to see whether they should allow evidence to be called on the matters dealt with in them.

R. v. DICKMAN, 74 J. P. 449; 26 T. L. R. 640—  
[C. C. A.]

## (f) Insanity.

See also No. 1, *supra*.

**96. Special Verdict—Guilty but Insane—"Conviction"—Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38), s. 2—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 3.**—The special verdict of "Guilty but insane" returned under the Trial of Lunatics Act, 1883, coupled with the order for the prisoner's detention as a criminal lunatic till his Majesty's pleasure shall be known, is a "conviction" of the prisoner within the meaning of that term in sect. 3 of the Criminal Appeal Act, 1907.

R. v. IRELAND, [1910] 1 K. B. 654; 79 L. J. [K. B. 338; 102 L. T. 608; 74 J. P. 206; 26 T. L. R. 267; 54 Sol. Jo. 543—C. C. A.]

## (g) Mistakes of Judges.

See also I. (g), *supra*, No. 101, *infra*;  
GAMING, No. 8.

**97. Defence not Put before Jury—Disturbing Religious Meeting—Places of Religious Worship Act, 1812 (52 Geo. 3, c. 155), s. 12.**—Conviction quashed on the ground that the defence raised had not been properly put before the jury in the summing-up.

R. v. DINNICK, 74 J. P. 32; 26 T. L. R. 74—  
[C. C. A.]

See S. C. No. 46, *supra*.

**98. Summing Up—Larceny—Evidence of Felonious Intent.**—A. sold a horse to B. There was a dispute between A. and B. as to the price at which the horse was sold, and eventually A., after repeated efforts to obtain what he said was owed to him by B., threatened to take the horse back, and eventually did so. A. was convicted of larceny.

The Court quashed the conviction on the ground that there was no proper summing up, and also no evidence of "felonious intent" to go to the jury.

R. v. CLAY, 74 J. P. 55—C. C. A.

**99. Misdirection—Rape—Defence of Consent—Prisoner not giving Evidence before Justices.**—The prisoner, who was charged with rape, did not give evidence before the justices, but the defence of consent was then raised. At the trial the judge, in summing up, told the jury that the defence of consent was a mere afterthought. The prisoner was convicted.

**HELD**—that there had been misdirection,



**IV. Criminal Appeals—Continued.**

which must have influenced the jury, and that the conviction must, therefore, be quashed.

R. v. RODDA, 74 J. P. 412; 26 T. L. R. 539—  
[C. C. A.]

**(h) Practice.**

See also Nos. 17, 94, *supra*.

**100. Appeal on Question of Fact—Right of Prisoner to be Present—Prisoner Ill—Waiver by Counsel—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 11 (1).]**—On an appeal involving questions of fact an appellant is entitled to be present, if he desires to be, and his counsel cannot waive the right, *e.g.*, when the prisoner is ill.

R. v. DUNLEAVEY, [1909] 1 K. B. 200; 78 L. J. [K. B. 359; 100 L. T. 240; 21 Cox, C. C. 760—C. C. A.]

**101. Comparison of Handwriting by Court of Criminal Appeal.]**—In this case the question was one of identity. At the trial there was a considerable conflict of oral evidence.

The Court of Criminal Appeal compared the writing of the real culprit with that of the appellant written at the trial, on his notice of appeal, and in prison, and expressed the opinion that the two sets of writing were by a different hand. On that ground and on the ground that the differences between the handwriting of the appellant at the trial and that of the real culprit were not adequately and clearly dealt with in the summing up, they quashed the conviction.

R. v. SMITH, 74 J. P. 54—C. C. A.

**102. Notice of Appeal—Extension of Time—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 7 (1).]**—The Court of Criminal Appeal will require substantial reasons to be advanced before they will grant an extension of time for giving notice of appeal, or of application for leave to appeal, under sect. 7 (1) of the Criminal Appeal Act, 1907, at all events where the delay is other than slight.

R. v. RHODES, 74 J. P. 380—C. C. A.

**103. Appeal to House of Lords—Practice—Typewritten Documents—List of Documents—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 1 (6).]**—Where the Director of Public Prosecutions brought an appeal under sect. 1 (6) of the Criminal Appeal Act, 1907, against a decision of the Court of Criminal Appeal quashing a conviction for incest, it was decided that the papers in the case need not be printed.

List of documents in the case which were deemed sufficient.

DIRECTOR OF PUBLIC PROSECUTIONS v. A. B.  
[AND C. D., [1910] W. N. 255—H. L.]

**104. Appeal to House of Lords—Order Quashing Conviction Reversed—Re-arrest of Convicted Person—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 1 (6).]**—Where an order made by the Court of Criminal Appeal quashing a conviction is reversed by the House of Lords on an appeal by the Director of Public Prosecutions under sect. 1 (6) of the Criminal Appeal Act, 1907, the proper course for the prosecution is to apply

to the Court of Criminal Appeal, which is a Court of record, to have effect given to the order of the House of Lords. The Court has power to order the arrest of the person convicted in order that he may undergo the sentence passed upon him.

R. v. BALL, *Times*, December 20th, 1910; 74 J. P. N. C. 628—C. C. A.

See also No. 94, *supra*.

**105. Costs—Sentence not Appealed against—Order on Appellant to Pay Costs of Appeal—Variation of Sentence.]**—Where an appellant appeals against a conviction but not against the sentence, the Court cannot order the appellant to pay the costs of the appeal, as to do so would be to vary the sentence unappealed against.

R. v. REYNOLDS, 74 J. P. N. C. 605—C. C. A.

**(i) Rogues and Vagabonds.**

[No paragraphs in this vol. of the Digest.]

**CROPS.**

See AGRICULTURE; LANDLORD AND TENANT.

**CROSSED CHEQUES.**

See BANKERS.

**CROWN.**

See CROWN PRACTICE; DEPENDENCIES AND COLONIES; ROYAL FORCES.

**CROWN DEBT.**

See BANKRUPTCY; DEPENDENCIES AND COLONIES.

**CROWN PRACTICE.**

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See also DEPENDENCIES, Nos. 1, 2; PRISONS, No. 1; REVENUE, Nos. 7, 8; ROYAL FORCES.

**I. CIVIL PROCEEDINGS AGAINST CROWN AND CROWN SERVANTS.**

**1. Action Claiming Declaration—Competency—R. S. C., Ord. 25, rr. 4, 5—Finance (1909-10)**



## I. Civil Proceedings against Crown and Crown Servants—Continued.

*Act*, 1910 (10 Edw. 7, c. 8), *Form IV.*—The Court has jurisdiction to entertain an action against the Attorney-General, as representing the Crown, claiming a declaration of right. The Court is not, however, bound to make a mere declaratory judgment, and in the exercise of its discretion will have regard to all the circumstances of the case.

*Hodge v. Attorney-General* ((1839), 3 Y. & C. Ex. 342) approved and followed.

Ord. 25, r. 4, of the R. S. C., ought not to be applied to an action involving serious investigations of ancient law and questions of general importance.

DYSON *v.* ATTORNEY-GENERAL, [1910] W. N. [276; 27 T. L. R. 143—C. A.

## II. CROWN RIGHTS.

See LUNATICS, VI.; ROYAL FORCES, No. 2; SHIPPING, No. 78.

## III. CERTIORARI.

See also COUNTY COURTS, No. 3.

2. *Conviction at Petty Sessions—Pending Appeal to Quarter Sessions.*—*Certiorari* will not lie to quash a conviction by a petty sessional Court pending an appeal to quarter sessions.

R. *v.* BARNES AND OTHERS, *EX PARTE* LORD [VERNON, 102 L. T. 860; 74 J. P. 231—Div. Ct.

## IV. HABEAS CORPUS.

See also EXTRADITION, Nos. 2, 3.

3. *Person Detained by Virtue of Proclamation in British Protectorate—Secretary of State—Power to Issue Writ—Habeas Corpus Act, 1862* (25 & 26 Vict. c. 20), s. 1.—By virtue of a proclamation issued by the High Commissioner for South Africa, under the authority of Orders in Council made in pursuance of the Foreign Jurisdiction Act, 1890, S., an ex-chief, a British subject, was detained in the Bechuanaland Protectorate, and prevented from returning to his own tribe. A rule *nisi* having been obtained for a writ of *habeas corpus* to bring up S., addressed to the Secretary of State for the Colonies:—

HELD—(1) that the Habeas Corpus Act, 1862, had no effect as preventing the issue into the Bechuanaland Protectorate of the writ of *habeas corpus*, inasmuch as that Act only relates to the territorial dominions of the Crown; but (2) that the proclamation under which the detention of S. was effected was one which could lawfully be made by the High Commissioner for the maintenance of peace, order, and good government within the Protectorate; (3) that the arrest and detention of S. were acts of state which could not be questioned in a court of law, and therefore that the rule must be discharged.

*Semble*, the writ of *habeas corpus* may be addressed to any person who has such control over the imprisonment of the person detained that he can order his release.

Decision of Div. Ct. (26 T. L. R. 192) affirmed on other grounds.

R. *v.* EARL OF CREWE, [1910] 2 K. B. 576; 79 [L. J. K. B. 874; 102 L. T. 760; 26 T. L. R. 439—C. A.

## V. MANDAMUS.

See also RATES, No. 6.

4. *Writ Irregular—Amendment.*—The mandatory portion of a writ of mandamus cannot be amended so as to make it vary from the terms of the order directing the issue of the writ.

Where a mandamus commands several things, the prosecutor must show that he is entitled to the whole. If the claim for one of them fails a peremptory mandamus cannot go.

R. (JACKSON) *v.* CORK COUNTY COUNCIL, 44 [1. L. T. 79—Div. Ct., Ireland.

5. *Justices—Election of—Petty Sessions Clerk—Office de facto Filled.*—The prerogative right of the King to inquire whether a public office has been properly filled exists even in cases where the writ of *quo warranto* does not lie, and, where there is no other remedy, the King's Bench Division has jurisdiction in such cases to grant a mandamus to compel an election, notwithstanding that the office is *de facto* filled.

R. (ROYCROFT) *v.* JUSTICES OF SCHULL, ETC., [PETTY SESSIONS DISTRICTS, AND WHITLEY, [1910] 2 I. R. 601; *sub nom.* R. (ROYCROFT) *v.* JUSTICES OF COUNTY CORK, 44 I. L. T. 120 —C. A., Ireland.

## CRUELTY TO ANIMALS.

See ANIMALS.

## CRUELTY TO CHILDREN.

See CRIMINAL LAW.

## CUSTOM OF THE COUNTRY.

See AGRICULTURE.

## CUSTOMS AND USAGES.

See AGENCY; BANKERS; BANKRUPTCY; BILLS OF EXCHANGE; BUILDERS; CARRIERS; STOCK EXCHANGE; TRADE.

## CUSTOMS DUTIES.

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## DAMAGES.

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See also ANIMALS, No. 6; NEGLIGENCE, Nos. 8, 13; NUISANCE, Nos. 4, 6; RATES, No. 7; SHIPPING, IX. (c).

## I. CLASSIFICATION OF DAMAGES.

## (a) General or Nominal.

[No paragraphs in this vol. of the Digest.]

## (b) Penalty or Liquidated.

[No paragraphs in this vol. of the Digest.]

## (c) Consequential.

1. *Fraud—Auctioneer—Bogus Bids—Costs of Action by Vendor for Specific Performance—Recoverable by Purchaser against Auctioneer.*—A purchaser was induced by bogus bids at an auction to give an inflated price for a farm. Being suspicious, he refused to complete and was sued by the vendor for specific performance. The purchaser having no proof of the fraud settled this action, the price of the farm being reduced and each party bearing his own costs. In a subsequent action of deceit by the purchaser against the auctioneer:—

HELD—that the costs of the action for specific performance were recoverable against the defendant as damages caused by the defendant's fraud.

INGRAM v. GILLEN, 44 I. L. T. 103—Cherry, L. J., [Ireland.]

See S. C. under AUCTIONS, II. (a).

## II. MEASURE OF DAMAGES.

[No paragraphs in this vol. of the Digest.]

## III. WHEN DAMAGES CANNOT BE RECOVERED.

See also NEGLIGENCE, No. 8.

2. *Remoteness—Breach of Contract—Weighing of Chances.*—In general the law regards damages which depend upon the weighing of chances as too remote, and therefore as irrecoverable.

By a contract made in December, 1907, and January, 1908, it was agreed that Cyllene, a racehorse belonging to the defendant, should in the season of 1909 serve one of the plaintiff's brood mares for a fee of £315 to be paid at the time of the service. In the summer of 1908 the defendant, without notice to the plaintiff, sold Cyllene. The plaintiff sued the defendant, claiming a sum equal to the average profit he had made through having a mare served by Cyllene during the previous four years.

HELD—that the plaintiff was only entitled to nominal damages, as the estimate of damages claimed by him could only be based upon a succession of contingencies, and therefore was too remote.

SAPWELL v. BASS, [1910] 2 K. B. 486; 79 L. J. [K. B. 932; 102 L. T. 811; 26 T. L. R. 452—Jelf, J.]

3. *Remoteness—Towage Contract—Sinking of Tow by Collision—Right of Tug Owner to Recover from Colliding Vessel for Loss of Towage Remuneration.*—The plaintiffs' tug was engaged in towing a ship from Antwerp to Port Talbot, under a contract which contained the clause "Sea towage interrupted by accident to be paid *pro rata* of distance towed." During the towage, the defendant's vessel, by the negligence of those on board, collided with and sank the tow. The tug was uninjured. The plaintiffs sued the defendant to recover the amount of towage remuneration so lost.

HELD—that the damage sustained by the plaintiffs by reason of the towage contract being no longer performable, in consequence of the sinking of the tow, gave the plaintiffs no cause of action against the defendant.

Cattle v. Stockton Waterworks Co. ((1875) L. R. 10 Q. B. 453) followed.

LA SOCIÉTÉ ANONYME DE REMORQUAGE À [HÉLICE v. BENNETS, 27 T. L. R. 77—Hamilton, J.]

4. *Master and Servant—Inducing Employer to Dismiss or not to Employ Workman—Insurance—Lists of Workmen not to be Employed Issued to Employers—Specification of Illegal Means Employed—Averments—Relevancy.*—A workman who had claimed and received compensation from a firm of employers under the Workmen's Compensation Act, 1906, brought an action of damages against an insurance company with whom the said firm and other similar firms were insured, in which he, *inter alia*, averred—"The defenders are in the habit of issuing regularly from time to time, to parties insured with them as aforesaid, lists of workmen whom they insist shall not be employed by said parties. The workmen whose names are inserted by defenders in said lists are thereby represented to be persons who are unfit or ought not to be employed."

### III. When Damages cannot be Recovered—*Continued.*

The defenders illegally, unwarrantably, and without any justification or reason therefor, included pursuer's name in said lists of unemployable persons issued by them as aforesaid, and thereby wrongfully, illegally, and maliciously brought about the pursuer's dismissal and non-employment on each of the occasions hereinafter condescended on." On record he specified three occasions on which, after either being employed or having a chance of being employed on work for firms insured with the defenders, he was either dismissed or refused employment. He averred that but for the defenders' actings he would not have been dismissed or would have been given employment on the occasions mentioned, but he did not aver that there had been any breach of contract.

**HELD**—that as the pursuer had failed to give any descriptive condescendence of any illegal means employed, he had not relevantly averred any actionable wrong, and action dismissed as irrelevant.

*Mogul Steamship Company v. McGregor, Gow & Co.* ([1892] A. C. 25); *Allen v. Flood* ([1898] A. C. 1); and *Quinn v. Leatham* ([1901] A. C. 495) considered and applied.

*Giblan v. National Amalgamated Labourers' Union of Great Britain and Ireland* ([1903] 2 K. B. 600) commented on.

*MACKENZIE v. IRON TRADES EMPLOYERS' INSURANCE ASSOCIATION, LD.*, [1910] S. C. 79; 47 Sc. L. R. 103—Ct. of Sess.

**5. Remoteness—Nervous Shock without Physical Impact.**—A cow while being driven with several others along a public street in charge of a boy suddenly bolted into the kitchen of a house. A woman, who was in the kitchen at the time, in an action of damages against the owner of the cow for negligence in employing an incompetent driver, averred that in consequence of the sudden appearance of the cow she had sustained a nervous shock, from the effects of which she had not recovered, and which she believed would be permanent.

**HELD**—that the action was relevant.

*GILLIGAN v. ROBB*, [1910] S. C. 856; 47 Sc. L. R. 733—Ct. of Sess.

### IV. ASSESSMENT.

See PRACTICE, No. 15.

## DANCING.

See THEATRES, ETC.

## DEAD FREIGHT.

See SHIPPING AND NAVIGATION.

## DEATH DUTIES.

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See also DEPENDENCIES, No. 22.

### I. ESTATE DUTY.

See also No. 12, *infra*.

**1. Foreigner Domiciled Abroad—Foreign Bonds Payable to Bearer—Bonds Lodged with Bank of England for Security—Property situate within the United Kingdom—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1, 2 (2).**—Estate duty is payable in respect of foreign bonds of which the deceased, who was a foreigner domiciled abroad, was the holder at the time of his death, such bonds being situate in this country at the time of his death, and being marketable securities passing by mere delivery.

*Attorney-General v. Glendinning* (1904) 92 L. T. 87—(Phillimore, J.) and *Attorney-General v. Bouvens* (1838) 4 M. & W. 171) considered and approved.

Decision of C. A. ([1908] 1 K. B. 1022; 77 L. J. K. B. 565; 98 L. T. 602; 24 T. L. R. 445; 52 Sol. Jo. 378) affirmed.

*WINANS v. ATTORNEY-GENERAL*, [1910] A. C. 27; 79 L. J. K. B. 156; 101 L. T. 754; 26 T. L. R. 133; 54 Sol. Jo. 133; 47 Sc. L. R. 593—H. L.

**2. Incidence of Duty—Specific Appointments by Will of a "Clear" Amount or Value—Further Appointments of a "Like" Amount—Liability of Appointments so Worded to Pay Duties—Appointment of the Residue—Intention of an Appointor by Will.**—A testator was desirous of exercising a power of appointment given to him by his marriage settlement. During his lifetime he had already appointed sums to two of his children by deed, and by his will he disposed of the remaining trust funds by giving to certain of his children sums of the "clear" value of £ , to others sums of a "like" amount to those clear sums, to others sums of £ sterling, and to one of his sons the residue. The effect of all the appointments, both by deed and will, was that, excluding the son appointed to residue, all the children took a nominally equal share under the settlement.

**HELD**—that, though the shares appointed were nominally of an equal amount, those expressed as being simply of £ sterling must be subject to the usual duty, whereas those worded as being of a "clear" amount or value, and those of a "like" amount to the "clear" sums, must be set aside without any deduction whatsoever, all duties and charges in connection with them being borne by the appointed residue.

*In re Saunders* ([1898] 1 Ch. 17) and *In re Currie* ((1888) 57 L. J. Ch. 743) followed.

*IN RE COXWELL'S TRUSTS, KINLOCH-COOKE [v. PUBLIC TRUSTEE]*, [1910] 1 Ch. 63; 79 L. J. Ch. 62; 101 L. T. 627—Joyce, J.

### I. Estate Duty—Continued.

3. *Incidence of Duty—Liability of Guaranteed Portions—"Cash Value"—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 8 (4), 14 (1).*—In a voluntary settlement the deceased had covenanted that certain funds available for portions for his children should be supplemented out of his estate so as to bring each portion up to £6,000, and in a further clause the portions were described as being of a "cash value" of £6,000.

HELD—that, as there was no covenant to pay the beneficiaries a "clear" sum, the case was within sect. 8, sub-sect. 4, and sect. 14, sub-sect. 1, of the Finance Act, 1894, and the duty must therefore be borne rateably by the persons interested in the fund.

KEKEWICH v. KEKEWICH, 101 L. T. 887—  
[Joyce, J.]

4. *Estate Duty on Personality—Undisposed of Personality Insufficient—Undisposed of Realty—Testamentary Expense—Marshalling Assets.*—The usual order of administration of assets will not be departed from for the purpose of relieving undisposed of realty from the payment of estate duty on personality. Estate duty payable by the executor is a testamentary expense, and the order of administration in respect of the payment of testamentary expenses being the same as that adopted for payment of debts, the duty must be met out of undisposed of realty before resort is had to specifically bequeathed personality or to devised realty.

*Shepherd v. Beetham* ((1877) 6 Ch. D. 597) discussed and distinguished.

IN RE PULLEN, PARKER v. PULLEN, [1910]  
[1 Ch. 564; 79 L. J. Ch. 303; 102 L. T. 453;  
54 Sol. Jo. 341—Warrington, J.]

5. *Legacy "Subject to Death Duties"—Estate Duty.*—A testator gave to his trustees a sum of £270,000 "subject to death duties" on trust for investment in real estate and to pay the income to his nephew during his life, and on his death on trusts for his children and remoter issue. The will contained the following direction:—"I direct that all the legacies given by this my will shall (except where expressly stated to be subject to death duties) be paid free from duty, which (whether presently or presumptively or prospectively payable) shall be paid out of my general personal estate." The testator gave his residuary real and personal estate on trust for sale and conversion, and out of the proceeds he directed the payment in the first place of certain trust expenses and his debts testamentary and funeral expenses, and in the next place of the pecuniary legacies given by the will.

HELD—that the legacy should pay settlement estate duty, and estate duty only so far as it represented proceeds of the sale of realty.

IN RE MORRISON, MORRISON v. MORRISON, 102  
[L. T. 530; 26 T. L. R. 395—Parker, J.]

6. *Incidence—Sum Charged on Property—Term for Discharge of Incumbrances—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 14 (1).*—Under the

limitations of a settlement by will certain persons were entitled to the benefit of the trusts of a term of 1,000 years for the discharge of the mortgages on their portion of the settled property out of the L. estate.

HELD—that those persons were not persons "entitled to any sum charged" upon the L. estate "whether as capital or as an annuity or otherwise" within the meaning of sect. 14 (1) of the Finance Act, 1894, and that estate duty on the L. estate was a first charge on the corpus of that estate.

IN RE EARL OF STAMFORD AND WARRING-  
[TON, PAYNE v. GREY, [1910] 2 Ch. 83;  
79 L. J. Ch. 435; 102 L. T. 802; 26 T. L. R.  
434; 54 Sol. Jo. 475—Warrington, J.]

7. *"Probate Duty"—Direction to Pay—Will made before and Death after Imposition of Estate Duty—Construction—Finance Act, 1894 (57 & 58 Vict. c. 30).*—A testatrix, by her will, made in 1888, directed "probate duty" to be paid, in certain events which happened, out of a specific fund. She died in 1896, after the Finance Act, 1894, had come into force, when estate duty and not so-called "probate duty" was payable.

HELD—that "probate duty" had in 1888 a well-known meaning, and could not be read as signifying estate duty, which was a duty of far wider scope, and therefore that the direction in the will was inoperative.

IN RE BOXER, MORRIS v. WOORE, [1910] 2 Ch.  
[69; 79 L. J. Ch. 492; 103 L. T. 126—Eady, J.]

8. *Incidence—Donatio Mortis Causâ—Direction in Will to Pay Testamentary Expenses out of Residue—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 2 (1), 6 (2), 8 (4), 9 (1), 22 (2) (a).*—A testator, who died in 1909, having made a valid *donatio mortis causâ*, by his will directed payment of his testamentary expenses out of his residuary estate.

HELD—that that the donee of the *donatio mortis causâ*, must bear the proper proportion of estate duty attributable to the value of the *donatio*.

IN RE HUDSON, SPENCER v. TURNER, [1910]  
[W. N. 269; 45 L. J. N. C. 791—Warrington, J.]

9. *General Power of Appointment—Power not Exercised—Will—Direction by Donee to Pay Her "Testamentary Expenses"—Payment and Recovery of Duty by Executors of Donee—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 2 (1) (a), 6 (2), 9 (1).*—A donee of a general power of appointment by deed or will died without exercising the power. By her will she expressly declared that she did not desire to exercise it; and she directed her executors to pay her testamentary expenses. The executors of the donee paid estate duty on the unappointed fund, as by sect. 6, sub-sect. 2 of the Finance Act, 1894, they were bound to do.

HELD—that the direction to pay testamentary expenses did not debar the executors from recovering the duty on the unappointed fund out of that fund.



**I. Estate Duty—Continued.**

*In re Clemow, Yeo v. Clemow* ([1900] 2 Ch. 182) explained.

*PORTE v. WILLIAMS*, [1910] W. N. 233; 55 Sol. Jo. 45—Joyce, J.

**10. Incidence—Sum Charged on Property—Marriage-Contract Provision—Trust-Disposition and Settlement—Finance Act, 1894** (57 & 58 Vict. c. 30), ss. 7 (1), 14 (1).—A., in 1889, bound himself, his heirs, executors, and representatives, by bond and disposition and assignation in security, to pay to his son's marriage-contract trustees the sum of £30,000, and conveyed to them in security the estate of B. He died in 1899. By his trust-disposition and settlement he directed his testamentary trustees to hold the lands of B. and the whole residue of his estate for his said son in life-rent and his grandson in fee.

**HELD**—that sect. 14 (1) of the Finance Act, 1894, applied, and that the testamentary trustees having paid estate duty on the whole estate of B., without deduction of the sum of £30,000 charged thereon, were entitled to recover from the marriage-contract trustees an amount equal to the proper rateable part of the estate duty in respect of the sum charged.

*ALEXANDER'S TRUSTEES v. ALEXANDER'S MARRIAGE-CONTRACT TRUSTEES*, [1910] S. C. 637; 47 Sc. L. R. 537—Ct. of Sess.

**II. LEGACY AND SUCCESSION DUTY.**

*See also* No. 5, *supra*; CHARITIES, No. 11; WILLS, No. 10.

**11. "Legacy"—Discretionary Gift—Payments at Absolute Discretion of Trustees—Moneys Payable out of Real Estate—Legacy Duty Act, 1796** (36 Geo. 3, c. 52), s. 11—*Stamp Act, 1815* (55 Geo. 3, c. 184), *Sched.—Revenue Act, 1845* (8 & 9 Vict. c. 76), s. 4—*Succession Duty Act, 1853* (16 & 17 Vict. c. 51), ss. 2, 32—*Customs and Inland Revenue Act, 1888* (51 Vict. c. 8), s. 21 (2).—A testator devised his W. R. estate to trustees upon trust in a certain event, which happened, to apply the whole or so much of the income of the estate as they "in their absolute, uncontrolled discretion might deem right to or for the maintenance and support or otherwise for the benefit" of a daughter.

**HELD**—that the moneys which had been or which might be applied by the trustees in their absolute discretion "to or for the maintenance and support or otherwise for the benefit of" the daughter, if and when they were so applied, whether by payments in money or payments for maintenance, were "legacies," liable to legacy and succession duty, as being within sect. 4 of the Revenue Act, 1845, a gift payable out of real estate or the rents and profits thereof, and also as being a "benefit" given by the will within sect. 11 of the Legacy Duty Act, 1796, and the schedule to the Stamp Act, 1815, and that they were none the less legacies because they were discretionary gifts subject to the absolute discretion of the trustees.

*ATTORNEY-GENERAL v. WADE*, [1910] 1 K. B. 703; 79 L. J. K. B. 569; 102 L. T. 494—Bray, J.

Y.D.

**12. Will—Direction to Pay Testamentary Expenses out of Residue—Estate Duty—Settlement Estate Duty—Increased Duties—New Legacy and Succession Duties—Finance** (1909-10) Act, 1910, ss. 54, 58 (2) (4).—A testator who died in July, 1909, bequeathed his residuary personalty upon trust to pay thereout all his testamentary expenses incident to the trusts, including estate duty and settlement estate duty.

**HELD**—that the increased duties and the new legacy and succession duties imposed by sect. 58, sub-sect. 2 of the Finance (1909-10) Act, 1910, were payable out of the residuary personalty.

*IN RE BRISCOE, ROYDS v. BRISCOE*, [1910] [W. N. 251; 55 Sol. Jo. 93—Eve, J.

**III. PROBATE DUTY.**

*See* No. 7, *supra*.

**DEATH, PRESUMPTION OF.**

*See* EVIDENCE.

**DEBENTURES.**

*See* COMPANIES.

**DEBTORS ACT, 1869.**

*See* BANKRUPTCY AND INSOLVENCY.

**DECEIT.**

*See* MISREPRESENTATION AND FRAUD.

**DECLARATIONS.**

*See* EVIDENCE.

**DEEDS AND OTHER INSTRUMENTS.**

*See also* CONTRACT; EQUITY; EVIDENCE; LANDLORD AND TENANT; MISREPRESENTATION, No. 2; POWERS; PRACTICE AND PROCEDURE; REAL PROPERTY, No. 5; RENTCHARGES, No. 3.

**1. Lease and Counterpart Differing in Terms—Patent Ambiguity in Lease.**—Although in a discrepancy between lease and counterpart the former may be the more important instrument,



**Deeds and other Instruments—Continued.**

yet where the lease discloses a patent ambiguity, the counterpart may be looked to to rectify its terms.

MATTHEWS *v.* SMALLWOOD, [1910] 1 Ch. [777; 79 L. J. Ch. 322; 102 L. T. 228—Parker, J.

2. *Assignment on Mortgage—Defective Title—Good Title Subsequently Acquired by Mortgagor Available to Make Assignment Effectual.*—A mortgagor, under the erroneous belief that he was entitled to the entirety of a trust fund as sole next of kin of an intestate, intended and purported to assign to his mortgagees the entirety of the fund, subject to two life interests mentioned in the mortgage deed. At the date of the deed he was entitled only to a moiety of the fund as one of the two persons who were the intestate's next of kin, but two years afterwards he became entitled to the other moiety as the sole next of kin of the other person, subject to the claims of that person's creditors. The recitals of the mortgage deed disclosed the fact that that other person who was also next of kin of the intestate was living at the date of the deed.

Held—that the moiety subsequently acquired was available in equity to make the assignment effectual as to the entirety of the trust fund.

*Niel v. Bowley* ((1829) 3 Sim. 103) and *In re Hoffe's Estate Act*, 1855 ((1900) 82 L. T. 536) applied.

IN RE BRIDGWATER'S SETTLEMENT, PART—[RIDGE *v.* WARD, [1910] 2 Ch. 342; 79 L. J. Ch. 746; 103 L. T. 421—Eady, J.  
*See* S. C., MORTGAGE, No. 1.

3. *Power to Consider Real Date of Execution.*—Save in certain exceptional circumstances, the court may consider the real date of the execution of an instrument, when that date is different from the date appearing on the instrument itself.

IN RE MAHER AND NUGENT'S CONTRACT, [1910] [1 I. R. 167—Ross, J., Ireland.

**DEED OF ARRANGEMENT.**

*See* BANKRUPTCY AND INSOLVENCY.

**DEED OF ASSIGNMENT.**

*See* CHOSSES IN ACTION.

**DEFAMATION.**

*See* LIBEL AND SLANDER.

**DEMURRAGE.**

*See* SHIPPING AND NAVIGATION.

**DENTISTS.**

*See* MEDICINE.

**DEPENDANTS.**

*See* MASTER AND SERVANT.

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See also COURTS, No. 1.

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**II. AUSTRALIA.****(a) Commonwealth.**

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**(b) New South Wales.**

See also PARTNERSHIP, No. 5; TRESPASS, No. 3.

**1. Crown Lands—Occupation Licence—Relationship between Crown and Licensee—Agreement by Crown not to Disturb Licensee—Jurisdiction of Land Appeal Court.**—The holder of an occupation licence under the Crown Lands Acts agreed with the Government that there should be a re-appraisal of the licence fees, but before the re-appraisal the Government demanded payment at the original rates, and the holder refusing to pay, the Government declined to renew his licence. Subsequently a fresh agreement was come to whereby, on the licensee paying at the old rate, the non-renewal was to be revoked and the licensee was to be permitted to quietly enjoy the property free from interference, disturbance, or eviction, an adjustment of the licence fees being eventually promised.

**HELD**—that the Crown could competently bind itself by such fresh agreement.

The Land Appeal Court of New South Wales has no jurisdiction to determine whether Crown land is open to annual lease or not.

Decision of the High Court of Australia (5 C. L. R. 217) affirmed.

**WILLIAMS v. O'KEEFE**, [1910] A. C. 186; 79 [L. J. P. C. 53; 101 L. T. 672; 26 T. L. R. 144—P. C.

**2. Conditional Purchase of Land—Reservation of Gold to Crown—Title—Crown Lands Alienation Act, 1861 (25 Vict. No. 1), ss. 13, 14.**—Land held under a "conditional purchase" was sold "free from incumbrances, but subject to the reservations mentioned in the schedule, and to the local laws and regulations affecting the

same." The schedule mentioned "gold reserved to the Crown."

**HELD**—that the two branches of the sentence were not intended to be mutually exclusive, and that it meant "subject to the reservation of gold, and to the provisions, whether in the nature of reservations or not, of the local laws and regulations."

Decision of Supreme Court of New South Wales affirmed.

**BARTON v. LEMPRIERE**, [1910] A. C. 330; 79 [L. J. P. C. 80; 102 L. T. 401; 26 T. L. R. 376—P. C.

**3. Sunday Trading—Sale at Railway Refreshment Room—Police Offences Act, 1901 (N. S. W.), s. 61.**—The lessee of railway refreshment rooms in New South Wales, who by his lease has to keep open those rooms at all times required by the Railway Commissioners, and to supply refreshments on demand to all persons arriving or departing by train at any time during the day or night, commits an offence against sect. 61 of the Police Offences Act, 1901, of New South Wales, if he sells refreshments on Sunday to a person other than a person arriving or departing by train.

Whether the Sunday trading clauses in the Police Offences Act, 1901, are binding upon the Crown, *quære*.

Decision of the Supreme Court of New South Wales (8 N. S. W., S. R., 272) reversed.

**KELLY v. HART**, [1910] A. C. 192; 79 L. J. [P. C. 55; 101 L. T. 693; 26 T. L. R. 121—P. C.

**4. Civil Service—Pension—Civil Service Act, 1884 (N. S. W.), ss. 43, 48.**—Prior to his fifteen years' service in the Civil Service of New South Wales, the respondent was employed for fifteen months as a "temporary draftsman" in a Government office in that colony at a salary calculated at so much per day.

**HELD**—on the construction of the Civil Service Act, 1884, that the respondent was entitled to a superannuation allowance in respect of his whole period of service.

**WILLIAMS v. MACHARG**, [1910] A. C. 476; 79 L. J. P. C. 96; 102 L. T. 870; 26 T. L. R. 523—P. C.

**(c) Queensland.**

[No paragraphs in this vol. of the Digest.]

**(d) South Australia.**

[No paragraphs in this vol. of the Digest.]

**(e) Victoria.**

[No paragraphs in this vol. of the Digest.]

**(f) Western Australia.**

See BUILDING CONTRACTS, No. 2.

**III. BRITISH SOUTH AFRICA.**

See COMPANIES, No. 1.

**(a) Bechuanaland.**

See CROWN PRACTICE, No. 3.

## III. British South Africa—Continued.

## (b) Cape Colony.

[No paragraphs in this vol. of the Digest.]

## (c) Natal.

[No paragraphs in this vol. of the Digest.]

## (d) Transvaal.

**5. Mutual Will—Survivor—Maternal Portions Payable at Majority—Rights of Heirs of Predecessor.**—Spouses were married in 1874 and by their ante-nuptial contract it was provided that there should be community of property between them. In 1877 they made a mutual will by which the survivor was appointed sole heir, executor, and administrator of the first-dying and guardian of the minor children, the survivor to educate and maintain the children till majority, when their father's or mother's portion was to be paid to them. In case of re-marriage the survivor was to choose two guardians of the "kinderbewijs" then to be provided, but to be entitled to retain the usufruct of the minors' portions during their minority.

HELD—(1) that the survivor and children were joint heirs of the first-dying; and (2) that the will did not impliedly direct a continuance of community of interest known as *hoedelhouder-schap* after the dissolution of the marriage by death.

Decision of Transvaal Supreme Court ([1909] T. S. 243) affirmed.

NATAL BANK, LD. v. ROOD, [1910] A. C. 570; [80 L. J. P. C. 22; 103 L. T. 229; 26 T. L. R. 622—P. C.]

## IV. CANADA.

## (a) Dominion Generally.

**6. Exchequer Court of Canada in Admiralty—Jurisdiction—Claim under Mortgage on Ship—Action in rem—Pleading—Abatement of Contract Price.**—In an action in rem brought in the Exchequer Court of Canada in Admiralty by the builders of a ship to enforce a mortgage thereon given to them on account of the contract price for its construction, the owners of the ship are not entitled by way of defence to set off a claim for unliquidated damages against the mortgagees for alleged breach of contract relating to the building of the ship.

Decision of the Supreme Court of Canada (40 Can. S. C. R. 418) reversed.

BOW, MCLACHLAN & CO., LD. v. SHIP CAMOSUN [AND UNION STEAMSHIP CO. OF BRITISH COLUMBIA, LD., [1909] A. C. 597; 79 L. J. P. C. 17; 101 L. T. 167; 25 T. L. R. 833—P. C.]

**7. Shipping—Collision—Ships entering Lock—Canadian Canal Regulations, 1895, s. 19 (d).**—The Canadian Canal Regulations, 1895, provide by sect. 19, sub-sect. (d): "When several boats or vessels are lying by or are waiting to enter any lock or canal, they shall lie in single tier, and at a distance of not less than 300 feet from such lock or entrance, . . . and each boat or vessel for the purpose of passing through shall advance in the order in which it may be lying in such

tier, except in the case of vessels of the first class, to which priority of passage is granted."

The *H.*, a steamship belonging to the respondent, was about to enter a lock on a canal when the *P.*, a steamship of the first class, belonging to the appellants, came up from behind and claimed a right to priority of passage. The *H.* went astern to make room for the *P.* to pass into the lock first, and lay up by the wing wall of the lock. Afterwards a collision occurred between the two vessels owing to the fault of the *P.*

HELD—that the *H.* was not obliged under the regulations to go back to a distance of 300 feet from the entrance to the lock, and was not to be held also to blame for the collision.

RICHIEU AND ONTARIO NAVIGATION CO. v. [TAYLOR, THE HAVANA, [1910] A. C. 170; 101 L. T. 501; 11 Asp. M. C. 315; sub nom. THE HAVANA, 79 L. J. P. C. 65—P. C.]

**8. Shipping—Pilotage Dues—Exemption—Ship "Propelled Wholly or in Part by Steam"—"Navigates"—Barge Towed by Steam Tug—Canadian Pilotage Act (Revised Statutes of Canada, 1886, c. 80), ss. 58, 59.**—By the Canadian Pilotage Act, s. 58, "every ship which navigates within" certain pilotage districts, "shall pay pilotage dues, unless . . . she is exempted under the provisions of this Act from payment of such dues." By sect. 59, "the following ships . . . shall be exempted from the compulsory payment of pilotage dues. . . . Ships propelled wholly or in part by steam."

HELD—that a barge rigged as a schooner, having masts with gaffs used as derricks for the discharge of cargo, and small sails used to steady her in a strong breeze, which could not be navigated as a sailing vessel in the ordinary way, but was intended to be, and was in fact always, towed from port to port by a tug, was a "ship" which "navigated" within the meaning of the Act, and was not "propelled wholly or in part by steam" so as to be exempt from the payment of pilotage dues when navigating within a pilotage district.

Judgment of the Supreme Court of Canada reversed.

The *Grandee* (8 Exch. Rep. Canada, 54, 79) disapproved.

ST. JOHN PILOT COMMISSIONERS v. CUMBERLAND RY. AND COAL CO., [1910] A. C. 208; 79 L. J. P. C. 67; 101 L. T. 498; 26 T. L. R. 52; 11 Asp. M. C. 312—P. C.]

**9. Public Lands—Water Rights—Powers of Dominion and Provincial Governments.**—A grant by a Provincial Government to the Dominion Government of Canada of public lands in the province passes the water rights incidental to such lands, so that it is not competent for the Provincial Legislature to deal with them by subsequent legislation.

Attorney-General for British Columbia v. Attorney-General for Canada (14 A. C. 295) discussed.

BURRARD POWER CO., LD. v. R., 103 L. T. 404; [27 T. L. R. 57—P. C.]

## IV. Canada—Continued.

10. *Contract between Banks—Pledge or Sale of Assets—Bank Act (Rev. Stat. Can.), 1906, c. 29.]*

—The Bank of O. was in difficulties, and would have been compelled to close its doors if it had been unable to obtain assistance. The Bank of M. came to its assistance, and, by agreement between the two banks, the Bank of M. agreed to "purchase by way of discount and re-discount at the rate of 6 per cent. all the call and current loans and overdue debts of the O. Bank . . . it being understood that the Bank of M. shall be entitled to the benefit and immediate transfer of all and every security and securities held for all or any of such loans and overdue debts." And, further, "for the indirect benefit thereby accruing to the Bank of M. it agrees to pay to the O. Bank, or to allow and credit in the final adjustment of accounts, the sum of 150,000 dollars."

**HELD**—that this was not a sale by the O. Bank of the whole or part of its assets within the meaning of the Canadian Bank Act, and was therefore not *ultra vires* and void as not having been carried out in the manner prescribed by the Act.

Judgment of the Court below affirmed.

Decision of the Court of Appeal of Ontario (21 Ontario L. R. 1) affirmed.

McFARLAND v. BANK OF MONTREAL AND [ROYAL TRUST CO., 103 L. T. 436 ; 27 T. L. R. 55—P.C.]

11. *Trade Mark—Registration—Essentials of Trade Mark—"Standard"—Canadian Trade Mark and Design Act, 1879.]*—The Canadian Trade Mark and Design Act, 1879, provides that the registration of a trade mark may be refused "if the so-called trade mark does not contain the essentials necessary to constitute a trade mark, properly speaking"; but it does not define the essentials of a trade mark.

**HELD**—that the word "Standard" being a common English word, used to convey the notion that the goods to which it is applied are of high class or superior quality, cannot be properly registered as a trade mark under the Act.

STANDARD IDEAL CO. v. STANDARD SANITARY [MANUFACTURING CO., 103 L. T. 440 ; 27 T. L. R. 63 ; 27 R. P. C. 789—P.C.]

## (b) British Columbia.

See COMPANIES, No. 16.

## (c) Lower Canada.

[No paragraphs in this vol. of the Digest.]

## (d) Manitoba.

[No paragraphs in this vol. of the Digest.]

## (e) Ontario.

See also CHARITIES, No. 15 ; INSURANCE, No. 4.

12. *Arbitration under Railway Act—Appeal from Award—Choice of Forum—Canada Railway Act, 1903, s. 168.]*—In Ontario an appeal

from an award by arbitrators under the Canada Railway Act, 1903, lies either to the High Court of Justice for Ontario or to the Court of Appeal for Ontario, but if the appeal is taken to the High Court no appeal lies from its decision to the Court of Appeal or to the Supreme Court of Canada.

JAMES BAY RY. CO. v. ARMSTRONG, [1909] [A. C. 624 ; 79 L. J. P. C. 11 ; 101 L. T. 362 ; 26 T. L. R. 1—P. C.]

13. *Mining Claim—Land Withdrawn from Exploration—Mines Act (Rev. Stat. Ont. c. 36).]*

—Where lands of the Crown have been withdrawn from exploration, the officials, acting under the Mines Act of Ontario, are justified in refusing to recognise a mining claim made after such withdrawal.

Decision of Court of Appeal for Ontario affirmed.

FLORENCE MINING CO. v. COBALT MINING CO., [102 L. T. 375—P. C.]

14. *Railway Company—Powers—Power to Construct Street Railways without Consent of Corporation—Stat. 8 Edw. 7, c. 112, s. 1—Effect on Former Decision.]*—The respondent company

were incorporated by Act of Parliament with power to lay down railways on the streets of a city. Disputes arose between the corporation of the city and the company as to the selection of streets for new lines when required, and it was decided in 1907 that, under the agreement between the parties, which was confirmed by the Act, it was for the company to decide what new lines should be laid down, and what routes should be adopted. Afterwards, in 1908, an Act was passed (8 Edw. 7, c. 112) which enacted by sect. 1: "Notwithstanding anything contained in the Act" incorporating the respondent company and confirming the agreement, "and notwithstanding any judicial decision interpreting the effect of the said Act and the said agreement, it is hereby declared that it is and always has been the true intent and meaning of the said Act that the rights retained and secured to the corporation . . . by the said agreement as to the control and management of the streets of the said city, and as to establishing and laying down new lines of railway, and as to extending the street car service upon the streets of the said city . . . have not been and are not affected by the said Act, but the said rights remain and are as set out in the said agreement."

**HELD**—that the decision in the former case was not affected by the legislation of 1908, and that the corporation, their servants and agents, should be restrained from preventing or interfering with the construction by the company of additional railways, in accordance with an order of the Ontario and Municipal Board, upon streets selected by the company.

Decision of C. A. for Ontario affirmed.

TORONTO CORPORATION v. TORONTO RY. CO., [1910] A. C. 312 ; 79 L. J. P. C. 94 ; 102 L. T. 299—P. C.]

15. *Common School Fund—Lands in Ontario—Rights of Quebec—Submission of Questions in*



## IV. Canada—Continued.

*Dispute to Arbitration—Jurisdiction of Arbitrators to Entertain Certain Claims by Quebec.*

HELD, that the arbitrators appointed by the Provinces of Ontario and Quebec for the ascertainment and determination of the principal of the Common School Fund and the amount for which Ontario was liable had no jurisdiction to entertain claims by Quebec against Ontario in respect of deductions and remissions allowed by Ontario to the purchasers of certain of the common school lands.

Decision of Supreme Court of Canada (42 Can. S. C. R. 161) affirmed.

ATTORNEY-GENERAL FOR THE PROVINCE OF [QUEBEC v. ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO, [1910] A. C. 627; 80 L. J. P. C. 35; 103 L. T. 328; 26 T. L. R. 679—P. C.

16. *Indian Lands—Extinction of Indian Title—Payment by Dominion—Liability of Ontario.*—The Province of Ontario is not liable to pay a proportion of the annuities and other moneys which the Dominion of Canada bound itself in the name of the Crown to pay to the Salteaux tribe of the Ojibway Indians under the Treaty of October 3rd, 1873.

Decision of Supreme Court of Canada (42 Can. S. C. R. 1) affirmed.

DOMINION OF CANADA v. PROVINCE OF [ONTARIO, [1910] A. C. 637; 80 L. J. P. C. 32; 103 L. T. 331; 26 T. L. R. 681—P. C.

(f) Quebec.

See also No. 15, *supra*; INSURANCE, No. 12.

17. *Extra-provincial Corporation Carrying on Business in Province—Employment of Traveller by Foreign Corporation—Quebec Act* (4 Edw. 7, c. 34).—The Quebec Act (4 Edw. 7, c. 34) enacts that no extra-provincial corporation shall carry on business in the province of Quebec unless it has obtained a licence. An American corporation employed a traveller to obtain orders in the province of Quebec, which orders were sent to the office of the corporation in the United States, from which the goods ordered were sent direct to the purchaser, who paid the corporation direct.

HELD—that the corporation were not carrying on business in the province of Quebec within the meaning of the Act.

STANDARD IDEAL CO. v. STANDARD SANITARY [MANUFACTURING CO., 103 L. T. 440; 27 T. L. R. 63; 27 R. P. C. 789—P. C.

## V. CEYLON.

18. *Roman-Dutch Law—Malicious Prosecution—Malice—Burden of Proof.*—A prosecution instituted without malice and with reasonable and probable cause cannot, under the Roman-Dutch law, be held to amount to an act of aggression. An *animus injuriæ* in the prosecutor cannot therefore be inferred from the mere fact that the prosecution has failed and the accused been acquitted. The burden of proving the

existence of malice rests under the Roman-Dutch law, as under English law, on the plaintiff in such an action.

COREA v. PEIRIS, [1909] A. C. 549; 79 L. J. [P. C. 25; 100 L. T. 790; 25 T. L. R. 631—P. C.

## VI. CHANNEL ISLANDS.

See HUSBAND AND WIFE, No. 1.

## VII. GIBRALTAR.

[No paragraphs in this vol. of the Digest.]

## VIII. HONG KONG.

19. *Perjury—Summary Committal—No Opportunity of giving Reasons against Summary Procedure—Hong Kong Ordinance* (No. 3 of 1873, s. 31).—The appellants were, under the provisions of sect. 31 of the Hong Kong Ordinance No. 3 of 1873, summarily committed to prison for corrupt perjury in open Court.

HELD—that the committal was bad, inasmuch as no opportunity had been given the appellants for explanation or correction of any misapprehension as to what had been said or meant by them in the evidence they had given.

CHANG HANG KIU v. PIGGOTT, IN RE LAI [HING FIRM, [1909] A. C. 312; 78 L. J. P. C. 89; 100 L. T. 310; 25 T. L. R. 381; 21 Cox, C. C. 778—P. C.

## VIII. ISLE OF MAN.

See also SPECIFIC PERFORMANCE, No. 1.

20. *Appeal—New Trial—Appellate Jurisdiction Act, 1867, s. 3.*—Under the Appellate Jurisdiction Act of 1867 of the Isle of Man a litigant, who has had a verdict given against him in the Court of first instance, is not entitled as of right to a new trial on the same evidence, but the Court is entitled to review the proceedings at the trial, both with respect to questions of law and questions of fact (except as to the admission or rejection of evidence) and to determine all questions of law, and as to questions of fact or questions of damages, subject to the limitations in the first proviso to the section, the Court has a discretion either to order a new trial or to order judgment to be entered for either party.

GILL v. WESTLAKE, [1910] A. C. 197; 79 L. J. [P. C. 73; 101 L. T. 764; 26 T. L. R. 201—P. C.

## IX. JAMAICA.

[No paragraphs in this vol. of the Digest.]

## IXB. MALTA.

[No paragraphs in this vol. of the Digest.]

## IXC. MAURITIUS.

[No paragraphs in this vol. of the Digest.]

## X. NEWFOUNDLAND.

21. *Railway—Telegraph Company—"Exclusive Right"—Right of Railway Company to Erect and Work Telegraph Lines.*—By an agreement between a railway company and a telegraph company, the railway company granted to the

## X. Newfoundland—Continued.

telegraph company the exclusive right for a term of years to enter upon the railway company's lands and to build, erect, maintain, and operate upon and along those lands as many lines of telegraph for the purpose of the telegraph company's business as that company might deem necessary, and a special wire for the use of the railway company for use in and about its management. By a subsequent clause the railway company agreed not to pass or transmit commercial messages over their special wire except for the benefit and account of the telegraph company.

HELD—that the "exclusive right" granted to the telegraph company of entering and erecting and working the telegraph lines did not exclude the right of the railway company to erect and work telegraph lines on its own property for the purposes of its railway business.

REID NEWFOUNDLAND COMPANY *v.* ANGLO-AMERICAN TELEGRAPH COMPANY, [1910] A. C. 560; 80 L. J. P. C. 20; 103 L. T. 145; 26 T. L. R. 614—P. C.

## XI. NEW ZEALAND.

22. *Death Duties—New Zealand Deceased Persons' Estates Duties Act, 1881, s. 35—Stamp—Deed of Gift—New Zealand Stamp Acts.*—By sect. 35 of the New Zealand Deceased Persons' Estates Duties Act, 1881, "it shall be lawful for any Court of competent jurisdiction . . . to declare any disposition of real or personal property to have been made for the purpose of evading the duty imposed by this Act, and also to declare that duty is payable on the property comprised in such disposition. . . ."

HELD—that if the transaction in question is real and *bonâ fide*, the intention to avoid the payment of death duties is not enough to bring it within the section.

A deceased person gave to his daughter a general power of attorney under which she with his consent received moneys due to him on mortgages and lent the money again to the same mortgagor in her own name.

HELD—that there was no gift to the daughter by any document, and therefore no stamp duty was payable as on a deed of gift.

Judgment of the Court of Appeal for New Zealand affirmed.

MINISTER OF STAMPS *v.* TOWNEND, [1909] [A. C. 633; 79 L. J. P. C. 5; 101 L. T. 354—P. C.]

23. *Gasworks—"Gasworks and Plant"—Purchase by Municipal Corporation—Basis of Assessment—Hamilton Gasworks Act, 1895, ss. 2, 44, 46(1).*—The expression "gasworks and plant" in the Hamilton Gasworks Act, 1895, includes not only the works themselves in the material sense, but the undertaking as a going concern.

Decision of Court of Appeal of New Zealand (27 New Zealand L. R. 1020) reversed.

HAMILTON GAS CO. *v.* HAMILTON CORPORATION, [1910] A. C. 300; 79 L. J. P. C. 76; 102 L. T. 372; 74 J. P. 185; 26 T. L. R. 377—P. C.

24. *Lease—Breach of Covenant—Right to Renewal of Lease—Breach of Condition Precedent—Specific Performance—New Zealand Property Law Act, 1908, s. 94(1).*—The New Zealand Property Law Act, 1908, does not enable the Court to give relief against failure to perform a condition precedent. Therefore where a lease gave the tenant the option of a renewal of the lease upon the expiration of the term originally granted, upon his performing and fulfilling all the covenants contained in the lease up to the expiration of the term, and the tenant gave notice of his desire to have a renewal, but the Court found that he had committed breaches of the covenants :—

HELD—that the tenant was not entitled to specific performance of the agreement to renew upon making compensation in money for any damages caused by his breaches of covenant.

Decision of Court of Appeal of New Zealand reversed.

GREVILLE *v.* PARKER, [1910] A. C. 335; 79 [L. J. P. C. 86; 102 L. T. 380; 26 T. L. R. 375—P. C.]

## XII. SHANGHAI.

25. *Jurisdiction—Forfeiture of Ship—Unauthorised Use of British Flag—Condemnation by Foreign Court—Merchant Shipping Acts, 1894 (57 & 58 Vict. c. 60), ss. 69, 76; and 1906 (6 Edw. 7, c. 48), s. 51.*—Under sect. 76 of the Merchant Shipping Act, 1894, only Courts which are within the dominions of the Crown can decree the forfeiture of a ship. Therefore the Supreme Court for China and Korea at Shanghai has no jurisdiction to decree the forfeiture of a ship for having, contrary to sect. 69 of the same Act, used the British flag without authority to do so.

THE OWNERS OF AND PARTIES INTERESTED [IN THE STEAMSHIP MAORI KING *v.* HIS BRITANNIC MAJESTY'S CONSUL-GENERAL AT SHANGHAI, [1909] A. C. 562; 78 L. J. P. C. 138; 100 L. T. 787; 25 T. L. R. 545; 53 Sol. Jo. 519; 11 Asp. M. C. 248—P. C.]

## XIII. SIERRA LEONE.

[No paragraphs in this vol. of the Digest.]

## XIII B. STRAITS SETTLEMENTS.

26. *Singapore Harbour—Collision—Defence of Compulsory Pilotage—Straits Settlements Ordinances, (1879) No. 8, ss. 1, 12; (1885) No. 5, s. 4; (1905) No. 8, ss. 21, 32; (1905) No. 7, ss. 20, 23.*—Pilotage in Singapore Harbour is not compulsory.

THE POLYNÉSIEEN, [1910] P. 28; 79 L. J. P. 45; [101 L. T. 749; 11 Asp. M. C. 354—Bigham, Pres.]

## XIV. TRINIDAD.

[No paragraphs in this vol. of the Digest.]

## XV. ZANZIBAR.

[No paragraphs in this vol. of the Digest.]

## XVI. INDIA.

See also EXTRADITION AND FUGITIVE OFFENDERS.

**27. Insolvency — Conflict of Jurisdiction — Punjab Laws Act IV. of 1872—Insolvent Debtors (India) Act, 1848 (11 & 12 Vict. c. 21).]**—A firm of traders carried on business at various places in the Punjab, and also at Bombay. In 1906, on the application of a creditor, an order was made by an Insolvency Court in the Punjab declaring the firm to be insolvent and requiring them to furnish lists of property, creditors, and debtors. Subsequently, on the application of other creditors, the High Court at Bombay adjudicated the firm to be insolvent under 11 & 12 Vict. c. 21, and made an order vesting the property of the debtors in the Official Assignee at Bombay, who thereupon applied to the Insolvency Court in the Punjab that the debtors' property within the jurisdiction of that Court should be handed over to him.

**HELD**—that under the Punjab Act no transfer of the debtors' property had been effected to the Punjab Court, and that the property had vested in the Official Assignee, Bombay, who was therefore entitled to the order asked for.

**OFFICIAL ASSIGNEE, BOMBAY v. REGISTRAR [OF THE SMALL CAUSE COURT AT AMRITSAR AND ANOTHER, 102 L. T. 258 ; 26 T. L. R. 353 —P. C.**

**28. Landlord and Tenant—Joint Landlords—Suit to Enhance Rent—Bengal Tenancy Act, 1885.]**—A suit to enhance rent is a thing authorised by the Bengal Tenancy Act, 1885, and in such a suit, where two or more persons are joint landlords, all the joint landlords must join as co-plaintiffs.

**ROY JATINDRA NATH CHOWDHRI AND [ANOTHER v. PRASANNA KUMAR BANERJI AND OTHERS, 27 T. L. R. 93—P. C.**

**DEPOSIT.**

See BAILMENT ; BANKERS ; BUILDING CONTRACTS, No. 1 ; INSURANCE ; PARLIAMENT.

**DEPOSITIONS.**

See CRIMINAL LAW AND PROCEDURE ; EVIDENCE ; MAGISTRATES, No. 7.

**DERELICT.**

See SHIPPING AND NAVIGATION.

**DESCENT AND DISTRIBUTION.**

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**I. DEVOLUTION OF ESTATE.**

See CHARITIES, No. 16.

**II. DISTRIBUTION OF ASSETS.**

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**DESIGNS.**

See TRADE MARKS AND DESIGNS.

**DETINUE AND DETENTION.**

[No paragraphs in this vol. of the Digest.]

**DEVISE.**

See WILLS.

**DIGNITIES.**

See PEERAGES AND DIGNITIES ; SCOT-TISH LAW, No. 2.

**DILAPIDATIONS.**

See ECCLESIASTICAL LAW ; LANDLORD AND TENANT.

**DIRECTORS.**

See COMPANIES.

**DISABILITIES.**

See HUSBAND AND WIFE ; INFANTS ; LUNATIC.

## DISCOVERY, INSPECTION, & INTERROGATORIES.

COL.

### I. DISCOVERY.

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### III. INTERROGATORIES . . . . . 178

See also EVIDENCE; HUSBAND AND WIFE,  
 MASTER AND SERVANT, No. 71;  
 PATENTS; PRACTICE.

### I. DISCOVERY.

See also No. 6, *infra*.

#### (a) In general.

1. *Bankruptcy—Application by Petitioning Creditor—Bankruptcy Rules, r. 72—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 27.*—An order for discovery or interrogatories will not be made to assist a petitioning creditor in proving the allegations in a bankruptcy petition. A petitioning creditor in an affidavit verifying the petition should confine himself to facts within his own knowledge.

IN RE A DEBTOR (No. 7 of 1910), [1910] 2 K. B. [59; *sub nom.* IN RE A DEBTOR, 102 L. T. 691; *sub nom.* IN RE A DEBTOR, EX PARTE PETITIONING CREDITORS, 26 T. L. R. 429; *sub nom.* IN RE A DEBTOR, EX PARTE TAYLOR & CO., 54 Sol. Jo. 459—C. A.

2. *Libel—Affidavit of Documents—Balance Sheets Disclosed—Obligation to Disclose Books from which Balance Sheets made up.*—The plaintiffs claimed damages for a statement published by the defendants alleging, as the plaintiffs averred, that the plaintiff company had no chance of success. The defendants denied that the words used bore the meaning attributed to them by the plaintiffs, and pleaded that they were true in their ordinary signification. The plaintiffs filed an affidavit of documents to which they scheduled their balance sheets and reports. Upon the application of the defendants an order was made for a further and better affidavit of documents, upon the ground that the plaintiffs had not disclosed the books from which the balance sheets were made up.

HELD—that the order had been rightly made, and that in any case the House would be slow to interfere with it, as the question involved was whether the discretion of the Master and judge at chambers had been rightly exercised in making the order.

Decision of C. A. ([1910] 1 K. B. 904; 79 L. J. K. B. 423; 102 L. T. 225; 26 T. L. R. 345) affirmed.

KENT COAL CONCESSIONS, LD. v. DUGUID AND [OTHERS], [1910] A. C. 452; 79 L. J. K. B. 872; 103 L. T. 89; 26 T. L. R. 571; 54 Sol. Jo. 634—H. L.

#### (b) Privilege.

3. *Member of Trade Union—Legal Aid—Letters to Society Placing Facts of Alleged Wrongful Dismissal before Committee.*—The appellant, a signalman, was dismissed from the service of the respondent company. He was a member of the Amalgamated Society of Railway Servants, and requested that his case should be taken up by the society. By the rules of the society full particulars were required before legal assistance could be expected from it in cases of unjust dismissal. The sanction of the society's executive committee or general secretary was needed before the society's solicitor was engaged. An action claiming damages for wrongful dismissal having been commenced at the expense of the society, the railway company took out a summons for discovery of all letters which had passed between the plaintiff and the society, giving the society the information which had led them to institute proceedings.

HELD—that such letters were not legal professional communications, and were not protected by the privilege attaching to such communications.

Anderson v. Bank of British Columbia ((1876) 2 Ch. D. 644, *per* James, L. J., at p. 656) approved.

Decision of C. A. (52 Sol. Jo. 840) affirmed.

JONES v. GREAT CENTRAL RY. CO., [1910] A. C. [4; 79 L. J. K. B. 191; 100 L. T. 710; 53 Sol. Jo. 428—H. L.

#### (c) Ship's Papers.

[No paragraphs in this vol. of the Digest.]

### II. INSPECTION.

4. *Bankers' Books—Power of Magistrate to Make Order for Inspection—Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), ss. 7, 10.*—A magistrate has power to make an order for the inspection of a banker's book under sect. 7 of the Bankers' Books Evidence Act, 1879.

R. v. Bradlaugh ((1883) 15 Cox, C. C. 222 n.—dictum of Coleridge, J.) not followed.

R. v. KINGHORN AND ANOTHER, EX PARTE [DUNNING, [1908] 2 K. B. 949; 78 L. J. K. B. 33; 99 L. T. 794; 72 J. P. 478; 21 Cox, C. C. 727—Div. Ct.

5. *Libel—Innuendo—Meaning Attached by Defendant to Words Complained of—Inadmissibility.*—In an action for libel, interrogatories which in substance ask whether the defendant meant by the words complained of that which is alleged to have been their meaning by the innuendo are not admissible.

Foster v. Perryman ((1891) 8 T. L. R. 115) not followed.

HEATON v. GOLDNEY, [1910] 1 K. B. 754; 79 [L. J. K. B. 541; 102 L. T. 451; 26 T. L. R. 383; 54 Sol. Jo. 391—C. A.

### III. INTERROGATORIES.

See No. 1, *supra*.

6. *Contents of Documents—Joint Possession of Defendant and Others—No Right to Production*



## III. Interrogatories—Continued.

—*Interrogatory as to Contents*—R. S.C., Ord. 31, r. 12.]—Where a defendant sets out documents in his affidavit of documents as being in his possession or power jointly with his partners and objects to produce the documents on that ground, the Court has power to allow an interrogatory to be administered by the plaintiff asking the defendant what are the contents of the documents which he so objects to produce and requiring copies of them to be exhibited to the answer.

RATTENBERRY v. MONRO, [1910] W. N. 245 :  
[103 L. T. 560; 55 Sol. Jo. 76—Eve, J.

## DISEASES.

See ANIMALS; PUBLIC HEALTH.

## DISHONOUR.

See BILLS OF EXCHANGE.

## DISORDERLY CONDUCT.

See CRIMINAL LAW AND PROCEDURE :  
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## DISORDERLY HOUSES.

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## DISTRESS.

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See also ANIMALS, No. 10; LANDLORD  
AND TENANT, No. 7; RATES, No. 7.

## I. IN GENERAL.

1. "No Sufficient Distress"—Evidence—*County Courts Act, 1888* (51 & 52 Vict. c. 43),

s. 139.]—It is not a condition precedent to proceeding under s. 139 of the County Courts Act, 1888, that a distress should have been put in and proved to be ineffectual. "No sufficient distress" may be proved by other evidence.

RICKETT v. GREEN, [1910] 1 K. B. 253; 79  
[L. J. K. B. 193; 102 L. T. 16—Div. Ct.

See S. C. under LANDLORD AND TENANT, VI.

## II. EXEMPTIONS.

## (a) Generally.

[No paragraphs in this vol. of the Digest.]

## (b) Goods of Third Persons.

2. *Hire-purchase Agreement Made by Wife of Tenant—Goods in Possession or Disposition of Tenant—Law of Distress Amendment Act, 1908* (8 Edw. 7, c. 53), ss. 1, 4 (1).]—By sect. 1 of the Law of Distress Amendment Act, 1908, exemption from distress for rent is given in respect of the goods of a person not being the tenant of the premises; and by sect. 4, the Act is not to apply to "goods comprised in any bill of sale, hire-purchase agreement, or settlement made by such tenant, nor to goods in the possession, order, or disposition of such tenant" as the reputed owner thereof.

Piano manufacturers lent to the wife of the tenant of a house a piano under a hire-purchase agreement under which the piano was to continue to be the property of the owners until all the instalments payable for the hire of the piano were paid. Before all these instalments were paid, the landlord levied a distress for rent due by the tenant and seized the piano which was in the premises. In an action by the owners of the piano for illegal distress:—

HELD—that the words "made by such tenant" in sect. 4 apply to "bill of sale" and to "hire-purchase agreement" as well as to the word "settlement," and that therefore a hire-purchase agreement to come within this exception must be one made by the tenant.

HELD—that the piano did not come within the exception in sect. 4 either as being "goods comprised in a hire-purchase agreement" or as "goods in the possession, order, or disposition of such tenant" as the reputed owner thereof, and that therefore the piano came within the protection given by sect. 1, and was exempt from the distress.

*Shenstone v. Freeman* (*infra*) approved.

Decision of Div. Ct. (102 L. T. 687; 26 T. L. R. 459; 54 Sol. Jo. 478) affirmed.

ROGERS, EUNGBLUT & Co. v. MARTIN, [1911]

[1 K. B. 19; [1910] W. N. 223; 103 L. T. 527; 27 T. L. R. 40; 55 Sol. Jo. 29—C. A.

3. *Piano Hired by Lessee of Theatre—Trade Custom—Goods in Possession, Order, or Disposition of Lessee—Reputed Ownership—Liability of Piano to Distress—Law of Distress Amendment Act, 1908* (8 Edw. 7, c. 53), ss. 1, 4.]—In the absence of evidence establishing a custom that

**II. Exemptions—Continued.**

pianos are so constantly hired to lessees of theatres for theatrical purposes as to exclude the doctrine of reputed ownership, the Court cannot assume as a matter of law that the lessee of a theatre is not the true owner of a piano which is in the theatre. In such a case the piano is not exempted by the Law of Distress Amendment Act, 1908, from liability to distress by the landlord of the theatre.

CHAPPELL *v.* HARRISON, 103 L. T. 594; 27 [T. L. R. 85—Div. Ct.]

4. *Piano on Hire-purchase System in Possession of Tenant's Wife—Law of Distress Amendment Act, 1908* (8 Edw. 7, c. 53), s. 4.]—Sect. 4 of the Law of Distress Amendment Act, 1908, provides that the protection given by the Act shall not apply to "goods comprised in any bill of sale, hire-purchase agreement, or settlement made by such tenant."

HELD—that the words "made by such tenant" apply not only to the word "settlement," but also to the words "bills of sale" and "hire-purchase agreement."

SHENSTONE & CO. *v.* FREEMAN, [1910] 2 K. B. [84; 79 L. J. K. B. 982; 102 L. T. 682; 26 T. L. R. 416; 54 Sol. Jo. 477—Div. Ct.]

5. *Declaration of Ownership — Signature to Declaration — Partnership — Law of Distress Amendment Act, 1908* (8 Edw. 7, c. 53), s. 1—*Statutory Declarations Act, 1835* (5 & 6 Will. 4, c. 62).]—The declaration to be made under sect. 1 of the Law of Distress Amendment Act, 1908, by an under-tenant, lodger, or other person whose goods have been seized under a distress need not be a statutory declaration under the Statutory Declarations Act, 1835.

Where the goods belong to a partnership the declaration need not be signed by each member of the firm. It is sufficient if it is signed by one partner with the authority of the other members of the firm.

ROGERS, EUNGBLUT & CO. *v.* MARTIN, 102 [L. T. 687; 26 T. L. R. 459; 54 Sol. Jo. 478—Div. Ct.]

See S. C. on appeal, *supra*, when the appeal on the above points was abandoned.

**III. PROCEDURE.****(a) Bailiff.**

[No paragraphs in this vol. of the Digest.]

**(b) Possession.**

[No paragraphs in this vol. of the Digest.]

**(c) Rescue.**

[No paragraphs in this vol. of the Digest.]

**(d) Sale.**

[No paragraphs in this vol. of the Digest.]

**DISTRIBUTION.**

See DESCENT AND DISTRIBUTION.

**DISTRICT COUNCILS.**

See LOCAL GOVERNMENT.

**DISUSED BURIAL GROUND.**

See BURIAL AND CREMATION.

**DITCHES.**

See HIGHWAYS; SEWERS AND DRAINS.

**DIVIDEND WARRANT.**

See COMPANIES.

**DIVIDENDS.**

See BANKRUPTCY; COMPANIES.

**DIVORCE.**

See HUSBAND AND WIFE.

**DOCKS.**

See RAILWAYS AND CANALS; SHIPPING AND NAVIGATION; WATERS AND WATERCOURSES.

**DOCTORS.**

See MEDICINE AND PHARMACY.

**DOGS.**

See ANIMALS.

**DOMESTIC ANIMALS.**

See ANIMALS.

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See BANKRUPTCY; CONFLICT OF LAWS.

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**II. PARTICULAR EASEMENTS.****(a) Rights of Way.****(i.) Abandonment.**

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**(ii.) Conveyance.**

[No paragraphs in this vol. of the Digest.]

**(iii.) Excessive User.**

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**(iv.) Grant of Right.**

1. *Presumption of Lost Grant—Prescriptive Right Defeated by Proof of Unity of Possession—Prescription at Common Law—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), s. 2.*—H. brought an action, claiming an injunction to restrain D. from trespassing over a road which passed through H.'s property. D. claimed a right of way over such road by virtue of a grant then lost, of which the former existence was to be presumed.

**HELD**—that though the defendant could not make good any claim to a right of way under sect. 2 of the Prescription Act, 1832, as such a claim was defeated by proof of unity of possession for a period, nor to a right of way by prescription at common law as such right originated at a date long subsequent to the reign of Richard I., in the circumstances of the case there was justification for making the presumption of a modern grant since lost or not produced.

Decision of Joyce, J. (78 L. J. Ch. 457; 100 L. T. 777) affirmed.

**HULBERT v. DALE**, [1909] 2 Ch. 570; 79 L. J. [Ch. 48; 101 L. T. 504—C. A.]

II. Particular Easements—Continued.

(v.) Prescription.

See No. 1, *supra*.

(vi.) Private Right of Way.

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(vii.) Way of Necessity.

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(b) Rights of Water and Watercourses.

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See also BURIAL AND CREMATION;  
LIMITATION OF ACTIONS, No. 3;  
NOTARIES; RATES, No. 10.

I. CHAPELS.

[No paragraphs in this vol. of the Digest.]

II. CHURCH OF ENGLAND.

(a) Discipline and Ecclesiastical Offences.

1. *Repulsion from Holy Communion*—"Open and Notorious Evil Liver"—*Marriage with Deceased Wife's Sister*—*Deceased Wife's Sister's Marriage Act, 1907* (7 Edw. 7, c. 47), s. 1.—A member of the Church of England who has married his deceased wife's sister is not, since the passing of the Deceased Wife's Sister's Marriage Act, 1907, an "open and notorious evil liver" within the meaning of the rubric prefixed to the service of the Holy Communion in the Book of Common Prayer, so as to justify his repulsion from the Holy Communion; and the first proviso in sect. 1 of the Deceased Wife's Sister's Marriage Act, 1907, does not protect a clergyman of the Church of England in respect of his repulsion of such person from the Holy Communion.

Decision of Div. Ct. (78 L. J. K. B. 976; 101 L. T. 106; 25 T. L. R. 553) affirmed.

R. v. DIBDIN, EX PARTE THOMPSON, [1910] 101 L. J. K. B. 517; 101 L. T. 722; 26 T. L. R. 150—C. A.

2. *Prosecution for Causing Scandal*—*Jurisdiction*—*Church Discipline Act, 1840* (3 & 4 Vict. c. 86), s. 3—*Clergy Discipline Act, 1892* (55 & 56 Vict. c. 32).—A promoter exhibited articles against a clergyman under the Church Discipline Act, 1840, charging him with having brought scandal on the church by conduct towards a certain woman which was unfitting and improper in his position as a clergyman and incumbent of the Church of England.

HELD—that since the passing of the Clergy Discipline Act, 1892, such a charge could not lawfully be brought under the Church Discipline Act, 1840.

BOWMAN v. LAX, [1910] P. 300; 27 T. L. R. 2—[Ch. Ct. of York.]

(b) Ornaments and Erections in Churches.

[No paragraphs in this vol. of the Digest.]

IIA. ADVOWSONS.

3. *Deed of Consolidation*—*Union of Two Benefices Held by Sole Patron*—*Order of Exchange*—*Right of Presentation to Consolidated Benefice*.—By a deed of consolidation, dated in 1738, two benefices—one the vicarage of D. and the other the rectory of P., there being then a sole patron of both livings—were united and consolidated to all intents and purposes in law whatsoever, the church of D. being constituted the mother church, to which (together with the rectory of P.) all future incumbents should by the same instruments be presented, instituted, and inducted. By an order of exchange dated in 1890 and made by the Board of Agriculture in pursuance of the Board of Agriculture Act, 1889, Lord S. being at the time the patron of the united benefices the plaintiff acquired from him certain properties "together with the advowson of the vicarage of D."

HELD—that, on the construction of the deed of consolidation, there was no intention to reserve



IIA. **Advowsons**—*Continued.*

any right to the patron of the advowson of P., but that the rector of D. for the time being was to be for ever after rector of D. *cum* P.; and that the order of exchange contained a sufficient description to enable the Court to say that the presentation to the united benefice of D. *cum* P. passed thereunder to the plaintiff.

*Robinson v. Marquis of Bristol* ((1851), 11 C. B. 241) and *Reynoldson v. Blake* ((1697), 1 Ld. Raym. 192) considered.

Decision of Neville, J., affirmed.

**LORD ELCHO v. ANDREWS**, [1910] 1 Ch. 706; [79 L. J. Ch. 586; 102 L. T. 403—C. A.]

III. **CHURCHWARDENS.**

[No paragraphs in this vol. of the Digest.]

IV. **CLERGY.**

**4. Residence—Lease of Rectory—No Condition for Avoiding Lease on Bishop requiring Residence of Rector—Void or Voidable—Pluralities Act, 1838 (1 & 2 Vict. c. 106), s. 59.**—A lease or an agreement for a lease of the residence belonging to a benefice which does not comply with the provisions of sect. 59 of the Pluralities Act, 1838—for example, by not containing a condition for avoiding the same upon the spiritual person being required by the bishop of the diocese to reside in the benefice—is voidable only; it only becomes absolutely null and void upon the spiritual person being actually required to reside in the benefice.

**RICKARD v. GRAHAM**, [1910] 1 Ch. 722; 79 [L. J. Ch. 378; 102 L. T. 482; 26 T. L. R. 384; 54 Sol. Jo. 426—Eady, J.]

V. **DILAPIDATIONS.**

[No paragraphs in this vol. of the Digest.]

VI. **ECCLESIASTICAL COURTS.**

[No paragraphs in this vol. of the Digest.]

VII. **ENDOWMENTS.**

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VIII. **FACULTIES.**

**5. Holy Table—Marble Slab on Table.**—Faculty refused for the placing in the chancel of a parish church a new Communion table with a marble slab on the top of it.

**RECTOR, ETC., OF HAYES v. FULFORD**, [1910] [P. 18; 26 T. L. R. 89—Consistory Ct. of London.]

**6. Churchyard—Purchase of Grave Spaces—Confirmatory Faculty.**—Faculty issued confirming to the petitioner the grant of two grave spaces in a parish churchyard.

**HENDON CHURCHYARD**, 27 T. L. R. 1—Consistory Ct. of London.

IX. **FIRST FRUITS AND TENTHS.**

[No paragraphs in this vol. of the Digest.]

X. **GLEBE.**

[No paragraphs in this vol. of the Digest.]

XI. **TITHE.**

See **ESTOPPEL**, No. 1.

**EDUCATION.**

See also **CHARITIES**. Nos. 3, 5, 14; **INFANTS**, No. 4; **METROPOLIS**, No. 1; **NEGLIGENCE**, Nos. 4, 5.

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I. **MAINTENANCE OF SCHOOLS.**

**1. Non-Provided School**—"Maintain and Keep Efficient"—*Teachers' Salaries—Local Education Authority—Power to Discriminate between Provided and Non-Provided Schools—Board of Education—Education Act, 1902 (2 Edw. 7, c. 42), s. 7.*—A local education authority has no power under the Education Act, 1902, to differentiate between the salaries paid to teachers in provided and in non-provided schools where the teachers are equally qualified and are teaching the same subjects.

Sect. 7, sub-sect. 3, of the Education Act, 1902, which provides that "if any question arises under this section between the local education authority and the managers of a school not provided by the authority, that question shall be determined by the Board of Education," does not enable the Board of Education to legislate, and if its decision is based upon a wrong interpretation of the Act such decision is not final, and it is competent to the Court in an action, notwithstanding that decision, to do what is right between the parties; but in all matters of fact not involving a wrong construction of the statute the decision of the Board of Education is final.

*Wilford v. West Riding of Yorkshire County Council* ([1908] 1 K. B. 685) approved.

Decision of Div. Ct. ([1909] 2 K. B. 1045; 79 L. J. K. B. 66; 101 L. T. 301; 23 J. P. 469; 25 T. L. R. 795; 7 L. G. R. 929) affirmed.

**R. v. BOARD OF EDUCATION, EX PARTE THE MANAGERS OF OXFORD STREET SCHOOL, SWANSEA**, [1910] 2 K. B. 165; 79 L. J. K. B. 692; 102 L. T. 578; 74 J. P. 259; 26 T. L. R. 422; 8 L. G. R. 549—C. A.]

**2. Non-provided School—Management—Appointment of Caretaker and Cleaner—Education Act, 1902 (2 Edw. 7, c. 42), s. 7.**—The managers of a non-provided school are entitled, without the interference of the local education authority, to cause the school to be duly cleaned

**I. Maintenance of Schools—Continued.**

and attended to, and they are entitled to receive from the local education authority the reasonable expenses incurred in connection therewith.

GILLOW v. DURHAM COUNTY COUNCIL, 27 [T. L. R. 64; 8 L. G. R. 1059—Hamilton, J.

3. *Trust for National Schools—Gift over if "School Board" or other Representative Body Formed under Education Acts—Education Act, 1902 (2 Edw. 7, c. 42), ss. 1, 13.]*—Trustees were directed in August, 1902, to pay a certain income "to the trustees of the national schools at A. for the purposes of education at such schools and the carrying on of the same until a school board or other representative body under the Education Acts shall be formed for the parish of A.," with a gift over in that event to certain almshouses at A.

HELD—that as the Education Act, 1902, abolished school boards and all representative educational bodies elected or constituted for educational purposes and transferred all the powers to the existing county authorities and made them educational authorities within the areas, it could not be said that a "school board" had been established for the parish of A., and that "other representative body" must mean such a representative body as is analogous to a school board and not a county council.

HELD, ALSO—that the event had not happened in which the fund was to go over to the almshouses, and that it was an endowment and must be dealt with under sect. 13 of the Education Act, 1902.

IN RE SMALLWOOD'S TRUSTS, GOTHARD v. [CHAPMAN, [1910] 1 Ch. 272; 79 L. J. Ch. 256; 101 L. T. 806; 74 J. P. 45—Parker, J.

4. *Site for National School—Disuse of School for Secular Purposes—Reverter of Land—School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 2.]*—In 1898 a site for a school was granted by deed poll under the School Sites Act, 1841, to the minister and churchwardens of a parish upon trust to permit the premises and all buildings erected thereon to be appropriated and used as a school for the education of the poorer classes in the parish, and that the school should be carried on according to the principles of the Established Church. The school could be used also for a Sunday school. Till 1907 the land and buildings thereon were used as a public elementary school, but the education authority having opened a provided school, the school in question ceased to be used for the purposes of a school except that a Sunday school continued to be held in the school building.

HELD—that the expression "the purposes in this Act mentioned" in the proviso to sect. 2 of the School Sites Act, 1841, meant the purposes to which the land was devoted by the grantor; that the purpose to which the land in question was devoted by the donor was for a day school for the education of the poor, the holding of a Sunday school being merely permissive and ancillary to that purpose; and that as the premises

had ceased to be used for the purposes of a day school, they reverted to the donor under sect. 2 of the School Sites Act, 1841.

ATTORNEY-GENERAL v. SHADWELL, [1910] [1 Ch. 92; 79 L. J. Ch. 113; 101 L. T. 630; 26 T. L. R. 82; 54 Sol. Jo. 180—Warrington, J.

5. *Local Education Authority—Negligence—Dangerous Premises—Swing Door in Infants' School—Trap—Duty to "Maintain and Keep Efficient" School—Education Act, 1902 (2 Edw. 7, c. 42), s. 7.]*—The plaintiff, a girl of six years of age, was a scholar at a school under the control of the defendants as the local education authority. Two of the rooms in the school were connected by a heavy swing door, which was put up before the school passed under the defendants' control. On November 4th, 1908, the plaintiff was told by the teacher to leave the room, and, in using the swing door to do so, was injured.

In an action for damages, the jury found that the defendants were guilty of negligence in allowing the door to remain as it was, and, in answer to a further question, found that the door as originally constructed was not suitable for use by infants.

HELD—that the duties taken over by the defendants by virtue of the Education Act, 1902, included not merely those as to scholastic matters, but also those relating to the physical condition of the school; that there was a duty on the defendants to discover the dangerous condition of the door and to substitute a safer means of access to the schoolroom; and that as the defendants had failed in this duty they were liable to the plaintiff.

Ching v. Surrey County Council (*infra*) followed.

Decision of Div. Ct. ([1910] 1 K. B. 159; 79 L. J. K. B. 169; 101 L. T. 914; 26 T. L. R. 137) affirmed.

MORRIS v. CARNARVON COUNTY COUNCIL, [1910] 1 K. B. 840; 79 L. J. K. B. 670; 102 L. T. 524; 74 J. P. 201; 26 T. L. R. 391; 54 Sol. Jo. 443; 8 L. G. R. 485—C. A.

6. *Local Education Authority—Provided School—Defect in Playground—Liability for Injury to Scholar—Education Acts, 1870 (33 & 34 Vict. c. 75), ss. 14, 15, 18, 19, 30, and 1902 (2 Edw. 7, c. 42), ss. 5, 7.]*—The plaintiff, a scholar attending a provided school, was injured by catching his foot in a hole in the school playground while he was lawfully in the playground. In an action against the defendants, as the local education authority, the jury returned a verdict in favour of the plaintiff, finding that the defective condition of the playground was due to the negligence of the defendants.

HELD—that the defendants were bound to maintain and keep efficient the school and playgrounds, and to keep them in good repair and safe for the use of the scholars while lawfully there; and that as the defendants had failed in this duty they were liable in damages to the plaintiff.

Decision of Bucknill, J. ([1909] 2 K. B. 762;

**I. Maintenance of Schools—Continued.**

78 L. J. K. B. 927 ; 100 L. T. 940 ; 73 J. P. 441 ; 25 T. L. R. 702 ; 7 L. G. R. 845) affirmed.

CHING v. SURREY COUNTY COUNCIL, [1910]

[1 K. B. 736; 79 L. J. K. B. 481; 74 J. P. 187; 102 L. T. 414; 26 T. L. R. 355; 54 Sol. Jo. 360; 8 L. G. R. 369—C. A.

**II. ENDOWED SCHOOL ACTS.**

[No paragraphs in this vol. of the Digest.]

**III. RELIGIOUS INSTRUCTION.**

See also CHARITIES, No. 3.

7. *Non-provided School—Education Act, 1902* (2 Edw. 7, c. 42), s. 7 (6).—On March 30th, 1909, a letter was sent by the secretary of the local education authority to the teachers of a non-provided school stating that they could not, under the scheme approved by the Court of Chancery, teach the doctrines of the Church of England. The school since its foundation sixty years ago had been conducted as a Church of England school. Under the scheme the vicar for the time being and the churchwardens were to be among the trustees. The children were to attend church and Sunday school, unless they were children of dissenters.

HELD—that the managers were entitled to authorise religious instruction by the regular teachers during school hours according to the doctrines of the Church of England.

IN RE WREXHAM PAROCHIAL EDUCATIONAL [FOUNDATION, ATTORNEY - GENERAL v. DENBIGHSHIRE COUNTY COUNCIL, 74 J. P. 198; 8 L. G. R. 526—Eady, J.

**IV. SCHOOL ATTENDANCE AND CHILD LABOUR.**

8. *Employment of Child by Servant during Prohibited Hours—Master Charged with Offence—No Information laid by Master against Servant—Employment of Children Act, 1903* (3 Edw. 7, c. 45), s. 6 (3).—The respondent was summoned under a bye-law made in pursuance of the Employment of Children Act, 1903, for employing a child, liable to attend school full time, between 8.30 a.m. and 5 p.m., on a day when the school was open. The child was engaged and his wages paid by a vanman who was in the employment of the respondent and who did so for his own convenience and benefit. The engagement of the child was a voluntary and gratuitous act on the part of the vanman and formed no part of any arrangement between him and the respondent. The respondent did not know that the child was employed by the vanman during the prohibited hours. No information had been laid by the respondent under sect. 6 (3) of the Employment of Children Act, 1903.

HELD—that as the vanman did not purport to take the child into employment on behalf of the respondent, the respondent had not committed the offence charged, and that the mere bringing of a charge of an offence under the Act was not sufficient to impose upon the person charged the duty under sect. 6 (3) of

laying an information against some other person whom he charges as the actual offender.

ROBINSON v. HILL, [1910] 1 K. B. 94; 79 L. J. [K. B. 189; 101 L. T. 573; 73 J. P. 514; 26 T. L. R. 17; 7 L. G. R. 1065—Div. Ct.

9. *Attendance Order—Change of School—Reasonable Excuse—Elementary Education Act, 1876* (39 & 40 Vict. c. 79), s. 12.—The respondent was summoned for non-compliance with an attendance order directing that the respondent's child should attend a certain school. It was proved that since the date of the attendance order the child had been withdrawn from the school named in the order and had been entered as a pupil at another public elementary school, at which, during a period of five weeks, she had made twenty-nine out of forty-six possible attendances.

HELD—that as the child was not attending the school to which she had been transferred in such a way as to constitute a reasonable excuse for non-compliance with the attendance order, the respondent had committed the offence for which he was summoned.

ISLE OF WIGHT COUNTY COUNCIL v. HOLLAND, [101 L. T. 861; 73 J. P. 507; 7 L. G. R. 1182—Div. Ct.

10. *Attendance Order—Non-compliance—Reasonable Excuse—Efficient Instruction of Child at Home—Elementary Education Act, 1876* (39 & 40 Vict. c. 75), s. 74—*Elementary Education Act, 1876* (39 & 40 Vict. c. 79), ss. 12, 48.—On the hearing of a summons against a parent under sect. 12 of the Elementary Education Act, 1876, for non-compliance with an attendance order made under sect. 11 of the same Act, it is open to the defendant to set up as a reasonable excuse for non-compliance with the attendance order the fact that the child is receiving efficient instruction at home.

R. v. WEST RIDING OF YORKSHIRE JUSTICES, [EX PARTE BROADBENT, [1910] 2 K. B. 192; 79 L. J. K. B. 731; sub nom. R. v. MORRIS AND OTHERS, EX PARTE BROADBENT, 102 L. T. 814; 74 J. P. 271; 26 T. L. R. 419; 8 L. G. R. 777—Div. Ct.

11. *Bye-law as to School Attendance—Child "Beneficially Employed"—Onus of Proof.*—A bye-law made by an education authority provided that the parent of every child of not less than five nor more than fourteen years of age should cause such child to attend school unless there was a reasonable excuse for non-attendance. The bye-law also provided that "a child between thirteen and fourteen years of age shown to the satisfaction of the local authority to be beneficially employed shall not be required to attend school if such child has obtained a certificate" of having made a certain number of attendances. On a prosecution by the education authority of a parent for not causing a child of thirteen to attend school:—

HELD—that under the bye-law, the onus of proving that the child was exempt from

#### IV. School Attendance and Child Labour—*Continued.*

the necessity of attendance, upon the ground that she was beneficially employed, rested upon the parent; that the justices were not intended to be the judges of what was beneficial employment; and that in deciding that nursing was a beneficial employment, they were usurping the function of the education authority.

HOLLOWAY v. CROW, 27 T. L. R. 140—Div. Ct.

#### V. TEACHERS AND OFFICERS.

##### (a) Teachers.

See INJUNCTIONS, No. 5; NEGLIGENCE, No. 5.

##### (b) Officers.

[No paragraphs in this vol. of the Digest.]

#### VI. MISCELLANEOUS.

12. *Blind and Deaf Child—Expenses of School Authority—Liability of Guardians for Pauper Child—“Parent”—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 3—Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), ss. 9, 15 (1).*—By sect. 9 (1) of the Elementary Education (Blind and Deaf Children) Act, 1893, where a school authority incurs any expense under the Act in respect of any blind or deaf child, the parent of the child shall be liable to contribute towards the expenses of the child. By sect. 15 (1) certain expressions, not including “parent,” are defined, and other expressions are, unless the contrary intention appears, to have the same meaning as in the Elementary Education Acts, 1870 to 1891. By sect. 3 of the Elementary Education Act, 1871, the term “parent” includes every person who is liable to maintain or has the actual custody of the child.

HELD—that in the case of a pauper child, who has no relative upon whom a claim can be made, and who has a settlement in a particular union but has never been in the custody of the guardians of that union, the board of guardians are not included in the expression “parent,” as the words “liable to maintain” do not include the obligation of the guardians to provide poor law relief.

SOUTHWARK UNION v. LONDON COUNTY COUNCIL, [1910] 2 K. B. 559; 79 L. J. K. B. 826; 102 L. T. 747; 74 J. P. 250; 8 L. G. R. 536—Div. Ct.

#### ELECTION.

See WILLS.

#### ELECTIONS.

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See also RATES AND RATING.

#### I. DISQUALIFICATION.

1. *Corrupt Practice by Agents—Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 6, sub-s. 3 (a), s. 38, sub-s. 5—Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), ss. 2, 3, sub-s. 2, s. 23.*—Sect. 6, sub-sect. 3 (a), and sect. 38, sub-sect. 5, of the Corrupt and Illegal Practices Prevention Act, 1883, which are made to apply to municipal elections by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, ss. 2, 23, apply to the case of a candidate being reported by the Election Court for a corrupt practice committed by him personally or with his knowledge and consent, but do not apply to the case of a candidate reported for a corrupt practice by his agents without his knowledge and consent. Therefore in the latter case the candidate is not disentitled to be put on the register for the period of seven years.

MORRIS v. TOWN CLERK OF SHREWSBURY, [1909] 1 K. B. 342; 78 L. J. K. B. 234; 99 L. T. 964; 73 J. P. 28; 7 L. G. R. 125; 21 Cox, C. C. 751; 2 Smith, Reg. 123—Div. Ct.

#### II. THE ELECTION.

See also Nos. 5, 6, *infra*.

2. *Commencement of Election—Question of Fact—Election Expenses—Petition.*—The question when an election begins for the purpose of the return of election expenses is a question of fact and degree in every case. The issue of the writ or the appointment of an election agent do not in any case determine the commencement of the election for that purpose.

Per Pickford, J.: When a man puts himself in the position of saying “I am not merely considering something in the distant future, but I am going to put myself by my candidature in such a position that I shall be ready at any

#### EDUCATION ACTS.

See CHARITIES; EDUCATION.

#### EJECTMENT.

See LANDLORD AND TENANT.



## II. The Election—Continued.

moment for the election," then what he does after that in connection with his candidature may be considered as part of the conduct and management of the election and expenses so incurred by him may be election expenses.

The respondent in this petition was acquitted of the charges of undue influence and bribery, but the election was declared void on the ground that expenses which ought to have been returned brought the election expenses above the legal maximum.

EAST DORSET, 6 O'M. & H. 22—Lawrance and [Pickford, JJ.

3. *Interference with Ballot Box—Attempt to Destroy Ballot Papers—Indictment*—"Packet of Ballot Papers"—*Ballot Act, 1872* (35 & 36 Vict. c. 33), s. 3 (6)—*Offences Against the Person Act, 1861* (24 & 25 Vict. c. 100), ss. 20, 47.—The defendant was indicted under sect. 3 (6) of the Ballot Act, 1872, for interfering with a ballot box then in use for the purposes of a parliamentary election, and for attempting to destroy a packet of ballot papers then in use for the same purpose; and further under sects. 20 and 47 of the Offences Against the Person Act, 1861, for unlawfully and maliciously inflicting grievous bodily harm upon the presiding officer at a polling station.

HELD—that a number of loose voting papers lying at the bottom of a ballot box at a time when the poll was still proceeding constituted a packet of ballot papers within the meaning of sect. 3 (6) of the Ballot Act, 1872, and that interference with such ballot papers amounted to interference with the ballot box itself.

HELD FURTHER—that personal malice need not be proved to sustain a count for unlawfully and maliciously inflicting grievous bodily harm.

R. v. *Martin* ((1881) 8 Q. B. D. 54) followed.

R. v. *CHAPIN*, 74 J. P. 71; 22 Cox. C. C. 10—[Grantham, J.

4. *Town Council Election—Irregularity of Proceedings—Death of Candidate before, but not Known to Returning Officer till after, Commencement of Poll—Stoppage of Poll—Town Councils (Scotland) Act, 1900* (63 & 64 Vict. c. 49), s. 36—*Ballot Act, 1872* (35 & 36 Vict. c. 33), s. 1.—One of three candidates for two vacancies in a town council died on the morning of the polling day, but the returning officer did not hear of the death till after the commencement of the poll. On hearing of it he stopped the poll and declared the two remaining candidates duly elected.

HELD—that as the Ballot Act, 1872, s. 1, only made provision in the event of a candidate dying before the commencement of the poll, for countermanning notice of the poll, which could not be done after the poll had commenced, the returning officer was wrong in stopping the poll, that, accordingly, there had been an irregularity in the proceedings rendering the election abortive, and that the vacancies fell to be filled up by the town council in one or other of the two ways *ad interim* prescribed by sect. 36 of the Town Councils (Scotland) Act, 1900, viz., either

(1) by the town council themselves after certain preliminaries, or (2) by a special election to be held as early as may be under the provisions of the Act.

URQUHART (LORD PROVOST OF DUNDEE) v. [AIR, [1910] S. C. 54; 47 Sc. L. R. 56—Ct. of Sess.

## III. ILLEGAL PRACTICES.

See also No. 2. *supra*.

5. *Petition—Election Expenses—Non-return—Conveyance by Special Train of Carriages belonging to Respondent's Son—Employment of Clerks in Respondent's Business—Expenses incurred by Agent—Corrupt and Illegal Practices Prevention Act, 1883* (46 & 47 Vict. c. 51), ss. 7, 11, 16, 17, 21, 28.—The respondent's son, who owned a number of horses and carriages in another county, hired a special train to convey them, together with grooms in his employment, to the borough where the respondent was a candidate for the purpose of using them in carrying electors to the poll.

HELD—that this was not an illegal practice within sect. 7 of the Corrupt and Illegal Practices Prevention Act, 1883.

*Per* Phillimore, J.: *Semble*—If a candidate who is a business man employs his business clerks for election work he should include in his election expenses a proportionate amount of their salaries.

Expenses incurred for the purpose of promoting or procuring the election of a candidate, if they are incurred by persons taking part in the conduct and management of the election, must almost necessarily be expenses on account of or in respect of the conduct and management of the election, and the non-return of such expenses as election expenses is an illegal practice.

W., a strong personal supporter of the respondent, organised a visit of miners from another constituency for the purpose of making a demonstration in favour of the respondent's candidature.

HELD—that, on the evidence, W. was an agent of the respondent and therefore that the non-return of the expense incurred by W. in connection with the miners' visit was an illegal practice and that the election must be declared void under sect. 11 of the Corrupt and Illegal Practices Prevention Act, 1883.

THE HARTLEPOOLS, 6 O'M. & H. 1—Phillimore [and Pickford, JJ.

6. *Corrupt Practices—Intimidation and Undue Influence—Corrupt and Illegal Practices Prevention Act, 1883* (46 & 47 Vict. c. 51).—In this case it was held on the evidence that the respondent by his agents had been guilty of intimidation and undue influence and the election was declared void.

EAST KERRY, 6 O'M. & H. 58—Madden and [Kennedy, JJ., Ireland,

## IV. LODGER VOTES.

7. *Furnished Bedroom at Five Shillings a Week—Rebutting Declaration—Rateable Value*

#### IV. Lodger Votes—Continued.

*of House Under Fourteen Pounds—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 23.*—The appellant, in due form and with the proper declaration, claimed to have his name inserted in the list of lodger voters. The declaration stated that the appellant paid 5s. a week for a furnished bedroom. The rateable value of the house in which the appellant lodged was less than £14 per annum. The appellant did not appear at the revision court to support his claim although notice had been served that his claim would be opposed. The revising barrister held that the *primâ facie* case established by the declaration attached to the claim had been rebutted, and disallowed the claim.

**HELD**—that the revising barrister was entitled to weigh the *primâ facie* case made by the declaration against the rebutting case furnished by the rate book, and in the absence of further evidence to hold that the claim was not established.

AINSWORTH v. CLERK TO CHESHIRE COUNTY [COUNCIL, 26 T. L. R. 82—Div. Ct.]

**8. Value of Lodgings—Rateable Value of Whole House—Evidence—The Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 4.**—On the hearing of a claim to a vote in respect of the lodger franchise, the fact that the rateable value of the house, of which the lodgings form part, is less than £8 a year, is admissible but not conclusive evidence upon the question of the sufficiency or insufficiency of the value of the lodgings to support the claim.

R. v. ALLEN, EX PARTE GRIFFITHS, 74 J. P. [154; 8 L. G. R. 979—Div. Ct.]

**9. Occupation as Sole Tenant—Daughters Sleeping in One of Two Bedrooms—Wife and Children—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 4.**—These were two cases stated by a revising barrister. In S.'s case, which was a claim to be inserted in a list of lodgers, it appeared that in one of the two bedrooms occupied by S., in respect of which he made his claim, his three daughters were accustomed to sleep. The barrister held that S. had not occupied separately and as sole tenant that bedroom, and as he found that the bedroom occupied by S. was by itself of insufficient value, he disallowed the claim.

In G.'s case, which was also a lodger claim, it appeared that in the bedroom occupied by G., in respect of which he made his claim, there slept in one bed G. and his wife, and in another bed G.'s two children. The barrister held that G. had not occupied the bedroom separately and as sole tenant.

**HELD**—that, in each case, the claimant had occupied separately and as sole tenant the room or rooms and was entitled to be on the lodgers' list.

SEARLE v. CLERK OF STAFFORDSHIRE COUNTY [COUNCIL; GOUGH v. CLERK OF STAFFORDSHIRE COUNTY COUNCIL, 130 L. T. Jo. 84; 74 J. P. N. C. 557—Div. Ct.]

**10. Lodger Franchise—Column of Claim for "Amount of Rent Paid" filled in—"Services in Lieu of Rent"—Statement in Declaration—Primâ Facie Evidence—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 23.**—A person claiming the lodger franchise inserted in the column of his claim headed "Amount of rent paid" the words "Services in lieu of rent." The claim was objected to on the ground that the words disclosed only the relation of master and servant, but no evidence was given on behalf of the objector to rebut the *primâ facie* effect of the declaration made by the claimant. The revising barrister decided that the claim was good on its face.

**HELD** (Lord O'Brien, C.J., dissenting)—that the claim should be disallowed, as the words "services in lieu of rent" indicated a service, rather than a lodger franchise, notwithstanding that the statement in the declaration of the claimant was *primâ facie* evidence of a tenancy, and that no evidence had been given to rebut said declaration.

TOPPING v. KEOGH, [1910] 2 I. R. 11; 44 [I. L. T. 41—C. A., Ireland.]

#### V. PETITION.

See Nos. 2, 5, 6, *supra*.

#### VI. OCCUPATION VOTERS.

**11. Successive Occupation—Second House not Rated for Short Period—Break in Qualifying Period of Occupation—Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), ss. 27, 28, 30—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), ss. 3, 26, 59—Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 38.**—The appellant occupied during the whole of the qualifying period two dwelling-houses in immediate succession, and had been duly rated and had paid all rates due in respect of the first house. He went into occupation of the second house on March 25th, 1909; the then current rate had been made in the previous October for the period ending March 31st, 1909, but the second house, being a new house, was not rated in that rate. On April 23rd a new rate was made for the period ending September 29th, but the house was not then entered in the rate book, but at some later date, before May 1st, and the whole rate made on April 23rd was demanded from and paid by the appellant. The appellant had made no claim to be rated for the second house for the period from March 25th to 31st, or from April 23rd, and had not paid or tendered any rates in respect thereof.

**HELD**—that, there being a break in the qualifying period between March 25th and 31st, during which time the house was not rated in the then current rate and no rates paid in respect of it, the appellant was not entitled to the franchise under sects. 3 and 26 of the Representation of the People Act, 1867.

*Pitts v. Michelmore* ([1909] 2 K. B. 244) followed.

WIDDICOMBE v. MICHELMORE, 102 L. T. 134; [74 J. P. 241; 8 L. G. R. 356; 2 Smith, Reg. 216—Div. Ct.]

# VI. Occupation Voters—Continued.

**12. Occupier of Dwelling-house — Landlord Resident in House—Lodger—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5.]**—Where the rooms in a house are let out as separate dwellings to tenants, and the landlord resides in a separate set of rooms in the house and is rated in respect of the whole house, evidence given by the tenants merely to the effect that the landlord has never claimed to exercise any dominion or control over the rooms occupied by them is not sufficient to negative a right of control being retained by the landlord. In the absence, therefore, of evidence of a giving up of control by the landlord, such tenants are not entitled to have their names inserted in Division I. of the Occupiers' List.

KENT *v.* FITTALL, 27 T. L. R. 79—Div. Ct.

**13. Inhabitant Occupier — Dwelling-house — "Sole and Exclusive Use"—Exclusive Occupation of Rooms with a Kitchen Subject to a Right of Way—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5.]**—Premises in respect of which the inhabitant household franchise was claimed were described as follows:—"Dwelling-house, being exclusive occupation of front room, ground and back room first floor, and so much of a kitchen as is not occupied by a right of way passing in a straight line from the door communicating between a common hall and the said kitchen and a common yard." A room upstairs was sublet, and the sub-tenant enjoyed the right of way aforesaid.

HELD—that the occupation prescribed by the statute involved sole and exclusive use of the premises, or part thereof, which constituted the voter's dwelling-house; that where any part of the dwelling of the claimant was subject to an incorporeal right vested in another person there could be no sole and exclusive use, and therefore the claimant was not entitled to the franchise.

*M'Bride v. Bryans*, [1908] 2 I. R. 329; and *Coyle v. Mahon*, [1908] 2 I. R. 622) reconsidered and followed.

STEELE *v.* MAHON, [1910] 2 I. R. 207; 44 [I. L. T. 37—C. A., Ireland.

## VII. OWNERSHIP VOTERS.

**14. Freehold House in City—Two-storey Building—Lower Storey Let to Tenant—Upper Storey Occupied by Owner—Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 24.]**—The appellant was the freeholder of a two-storey building in a city. Each storey formed a separate dwelling house entered by a separate outer door. The appellant occupied the upper storey, while the lower storey was let to a tenant. The appellant and the tenant of the lower storey were each entitled to be, and were, in fact, registered as voters in respect of their occupation on the list of occupation voters for the city. The appellant claimed to have his name inserted in the list of ownership voters for the county in respect of such freehold house.

HELD—that the appellant's claim was not barred by sect. 24 of the Representation of the People Act, 1832, and that he was entitled to

have his name inserted in the list of ownership voters for the county.

DOUGLAS *v.* SANDERSON, [1911] 1 K. B. 166; [27 T. L. R. 81; 55 Sol. Jo. 94—Div. Ct.

## VIII. REVISING BARRISTERS.

**15. Admissibility of Evidence—Objection to Voter—Hearsay Evidence in Support of Claim—Appeal—Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 41, 65.]**—A person claimed to have his name inserted in Division I. of the Occupiers' List in respect of his occupation in succession of two dwelling-houses. Notice of intention to oppose the claim was duly given. In support of the claim entries made in a canvasser's book were admitted in evidence, although there was nothing to show who gave the information contained therein. The revising barrister admitted the claim. He was not called upon to decide, and did not decide, whether the evidence given was legal evidence, but stated a case as to whether such evidence was properly admitted. The Divisional Court held that the Court, by virtue of the provisions of sect. 65 of the Parliamentary Voters Registration Act, 1843, was precluded from entertaining the appeal.

HELD—that the revising barrister was bound to apply his mind to the consideration of the question whether the evidence before him was admissible as legal evidence or not whenever such question arose, and that, as he had not done so, sect. 65 did not apply and the appeal must be allowed.

Decision of Div. Ct. (26 T. L. R. 123) reversed.

STOREY *v.* TOWN CLERK of BERMONDSEY, [1910] 1 K. B. 203; 79 L. J. K. B. 349; 102 L. T. 52; 74 J. P. 94; 26 T. L. R. 190; 54 Sol. Jo. 197; 8 L. G. R. 128; 2 Smith, Reg. 179—C. A.

## IX. SERVICE FRANCHISE.

[No paragraphs in this vol. of the Digest.]

## X. MISCELLANEOUS.

[No paragraphs in this vol. of the Digest.]

## ELECTRIC LIGHTING AND POWER.

See also INCOME TAX. No. 10; METROPOLIS. No. 9.

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And see HIGHWAYS.

### I. CONTRACT FOR SUPPLY.

**1. "Supply" of Electricity—Municipal Corporation—Supply of Fittings and Appliances—Ultra Vires—Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 10.]**—Under sect. 10 of the Electric Lighting Act, 1882, a local authority which is authorised to supply electricity has no



**I. Contract for Supply—Continued.**

power to supply fittings and appliances for use by consumers. The "supply" of electricity under the section is completed at the consumer's terminals.

ATTORNEY-GENERAL *v.* LEICESTER CORPORATION, [1910] 2 Ch. 359; 80 L. J. Ch. 21; 103 L. T. 214; 74 J. P. 385; 26 T. L. R. 568—Neville, J.

**2. Agreement for the Supply of Electricity—Measurement by Meters—Accuracy of Meters—“Electricity Actually Supplied”—Implied Warranty as to Accuracy of Meter—Finality of Meter Readings.**—An agreement was made between the plaintiffs and the defendants for the supply of electricity to work the plaintiffs' tramway. It was a term of the agreement that the amount of energy should be ascertained by the average reading of three Watt meters; that the meters should be calibrated and fixed by the defendants, and that, if and whenever any meter should show a difference of more than three per cent. from the mean reading of the other two, such meter should, at the option of either party, be removed and recalibrated, or, at the option of the defendants, replaced by another meter. It was a further term of the agreement that on written notice from one party to the other the three meters should be recalibrated *in situ* by the Board of Trade or by some other approved standardising institution agreed to in writing. Subject as aforesaid the average reading of the meters was to be final and binding between the parties.

On several occasions, covering a long period of time, it was found that the meters were inaccurate, and were registering fast as compared with a standard Aron meter. The plaintiffs contended upon the facts that they were entitled to have three meters installed which were capable of measuring the exact amount of energy consumed by them. The defendants contended that the plaintiffs were bound by the Watt meters as and when recalibrated in accordance with the terms of the contract.

**HELD**—(1) that the meters could not be condemned as long as the remedy by recalibration *in situ* remained open to the plaintiffs; (2) that if the error of any meter could be measured and was constant, and did not arise from any defective adjustment, the necessary rectification of the readings could be made in accordance with ascertained and constant error; (3) that there could not be held to be any breach of any express or implied term of the agreement until the plaintiffs had applied for recalibration and it had been refused; and (4) that the agreement did not amount to a warranty that the instruments installed should measure the amount of energy actually supplied, nor did it impose any express obligation on the defendants to keep the instruments up to the measure of accuracy which could show the energy actually supplied.

GRAVESEND AND NORTHFLEET ELECTRIC [TRAMWAYS, LD. *v.* GRAVESEND CORPORATION, 74 J. P. 156; 8 L. G. R. 445—Hamilton, J.

**II. GENERALLY.**

[No paragraphs in this vol. of the Digest.]

**EMBEZZLEMENT.**

*See* CRIMINAL LAW AND PROCEDURE.

**EMBLEMENTS.**

*See* AGRICULTURE; LANDLORD AND TENANT; REAL PROPERTY.

**EMIGRATION.**

*See* SHIPPING AND NAVIGATION.

**EMPLOYERS' LIABILITY.**

*See* MASTER AND SERVANT.

**ENDOWMENT.**

*See* CHARITIES; ECCLESIASTICAL LAW.

**EQUITABLE ASSIGNMENT.**

*See* CHOSSES IN ACTION; MORTGAGES.

**EQUITY.**

**1. Conversion—Reconversion—Real Estate—Sale by Order of Court—Death of Owner before Completion of Sale—Realty or Personality.**—An order of the Court, rightfully made for the sale of real estate during the life of the owner, operates as a conversion from the date of the order, so that the proceeds are personality; and after the death of the owner intestate, there is no equity for reconversion as between his heir-at-law and next-of-kin.

*Burgess v. Booth* ([1908] 2 Ch. 648) followed.  
IN RE STINSON'S ESTATE, [1910] 1 I. R. 13—  
[C. A., Ireland.

**2. Undue Influence—Promissory Notes by Husband and Wife—Nature of Transaction not Explained to Wife.**—Where a wife becomes surety for her husband in a transaction under which she is to get an indirect advantage, the nature of the transaction and what she is doing must be properly explained to her.

TALBOT *v.* VON BORIS, 27 T. L. R. 95—  
Phillimore, J.

**ESTATE AGENT.**

*See* AGENCY; AUCTIONS AND AUCTIONEERS; SALE OF LAND; VALUERS AND APPRAISERS.



**ESTATE DUTY.**

See DEATH DUTIES.

**ESTATE TAIL.**

See REAL PROPERTY.

**ESTOPPEL.**

See also AUCTIONS, No. 1; BANKRUPTCY, No. 13; COMPANIES, No. 60; MASTER AND SERVANT, No. 13; RAILWAYS, No. 2; SALE OF GOODS, Nos. 7, 11.

1. *Purchase of Land—Representation by Seller as to Tithes—Subsequent Discovery that Seller is Lay Impropiator of Tithes.*—A., when selling land to B., represented that there were no rectorial tithes, and the purchase price of the land was agreed on that basis. Subsequently A. discovered that he was the lay impropiator of the tithes. On A. taking proceedings against B. to obtain these tithes, B. raised the defence of estoppel.

HELD—that the defence was good.

MANSEL-LEWIS *v.* REES AND OTHERS, 102 L. T. [237; 54 Sol. Jo. 327—Div. Ct.]

2. *Landlord and Tenant—Action for Rent under Agreement—Statute of Frauds not Pleading—Second Action under same Agreement—Defence of Statute set up—Res Judicata.*—To an action in the county court for rent due under an agreement for a lease, the defendant set up that there was no concluded agreement for a tenancy. The judge held that there was a concluded agreement, and gave judgment for the plaintiff for the rent in question. Upon the next quarter's rent falling due and remaining unpaid, a second action was brought by the plaintiff upon the agreement, and the defendant gave notice of the special defence that there was no sufficient memorandum or note in writing of the terms of the agreement relied upon to satisfy the requirements of sect. 4 of the Statute of Frauds.

HELD—that the defendant, having neglected to set up the defence of the Statute of Frauds to the first action, was precluded from doing so to the second.

*Houlett v. Tarte* ((1861) 10 C. B. (N.S.) 813) considered.

Decision of Div. Ct. ([1910] 1 K. B. 796; 79 L. J. K. B. 544; 102 L. T. 492) affirmed.

HUMPHRIES *v.* HUMPHRIES, [1910] 2 K. B. [531; 77 L. J. K. B. 919; 103 L. T. 14—C. A.]

3. *Settlement—Action for Administration—Compromise—Order of Court—Subsequent Proceedings to set aside Appointment.*—In an action by the mortgagee of a life interest under a settlement against the trustees for administration, a compromise was effected and confirmed by the

Court, all parties interested under the settlement being parties thereto. Subsequently proceedings were commenced by C. and H., who were parties to the compromise in the previous action, against the P. Company, who were also parties to the compromise, to set aside certain appointments made under a power in the settlement before the compromise.

HELD—that the plaintiffs were not debarred from raising the question of the validity of the appointments on the ground that they had been parties to the compromise in the previous action, as this issue had not been previously raised.

Decision of Neville, J. ([1910] W. N. 163; 79 L. J. Ch. 640; 103 L. T. 131) affirmed.

CLOUTTE *v.* STOREY, [1910] W. N. 250; 103 [L. T. 617—C. A.]

**EVIDENCE.**

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**I. IN GENERAL.****(a) Admissibility.**

See No. 1; AGENCY, No. 11.

**(b) Affidavits.**

See also LIBEL, No. 10.

1. *Practice—Extracts from Letters Written without Prejudice—Striking Out—R. S. C., Ord. 38, r. 11.*—The question of the admissibility in evidence of letters written without prejudice ought to be decided at the trial of an action, when all the facts are before the Court, and not on an application under Ord. 38, r. 11, to strike extracts from such letters out of an affidavit.

IN RE JESSOPP (A SOLICITOR), [1910] W. N. [128; 54 Sol. Jo. 543—C. A.]

I. In General—*Continued.*

## (c) Miscellaneous.

2. *Interested Party—Corroboration.*—Where the evidence given by an interested party is corroborated in a substantial matter, it confirms the credit not only of the statements expressly supported, but also of all statements made by the interested party.

MINISTER OF STAMPS *v.* TOWNEND, [1909] A.C. [633; 79 L. J. P. C. 5; 101 L. T. 354—P. C.]

3. *Subpœna—Power to Set Aside—Improper Motives—Minister of Crown.*—The High Court has jurisdiction both in civil and criminal cases to set aside a subpœna served on a witness, if satisfied that he cannot give relevant evidence, and that the subpœna has been served on him for some ulterior purpose.

Subpœnas served on Ministers of the Crown were set aside on these grounds, but Ministers have no special privilege from the obligation of obeying a subpœna.

R. *v.* BAINES AND ANOTHER, [1909] 1 K. B. [258; 78 L. J. K. B. 119; 100 L. T. 78; 72 J. P. 524; 25 T. L. R. 79; 53 Sol. Jo. 101; 21 Cox, C. C. 756—Div. Ct.]

4. *Oral Evidence—Opinion of Judge of First Instance—Appeal.*—Observations (*per* Lord Loreburn, L.C.) on the great weight to be given to the opinion of the judge of first instance where the decision of a question rests on oral evidence.

YOUNG *v.* KINLOCH, 47 Sc. L. R. 356; [1910] A.C. 169—H. L. (Sc.).

## II. DOCUMENTS.

See also MASTER AND SERVANT, No. 13.

## (a) In General.

5. *Ancient Maps—Proof of Custody—Old Minute Book—Indictment for Non-repair of Bridge.*—On an indictment for the non-repair of a bridge the Court admitted in evidence an ancient map purporting to have been made by one C., a person of repute in connection with maps and surveys, proof being given of the custody from which it came.

*Semble*, the map would have been admissible even without proof of the custody from which it came.

The Court also admitted two maps purporting to have been made by the King's geographer, without proof of the custody from which they came; but refused to admit a copy of an old minute book which came from the custody of the bridge reeves of another bridge in the same neighbourhood as the bridge in question.

R. *v.* COUNTY COUNCIL OF NORFOLK, 26 T. L. R. [269—Jelf, J.]

6. *Ancient Maps—Disputed Right of Way—Old County Maps.*—In a question as to a disputed right of way:—

HELD—that old county maps, showing the way, published, one in 1797 by the King's geographer, and the other in 1826 by A. Bryant (a well-known country surveyor), and produced

from the British Museum by the proper official, were admissible as some evidence of reputation.

TRAFFORD *v.* ST. FAITH'S RURAL DISTRICT COUNCIL, 74 J. P. 297—Neville, J.]

See S. C. under HIGHWAYS, V.

7. *Tithe Map—Inclosure Map and Award.*—A tithe map is not admissible as evidence in a case of disputed boundaries between private owners.

*Semble*, an inclosure map might be evidence against the owner of land comprised in the inclosure award.

FROST *v.* RICHARDSON, 103 L. T. 22—Eve, J.]

See S. C. on appeal, 103 L. T. 416—C. A.]

## (b) Certificates.

[No paragraphs in this vol. of the Digest.]

## (c) Entries in Books, Reports, etc.

See BANKERS, No. 6.

## (d) Public Documents.

See LOCAL GOVERNMENT, No. 6.

## III. PERPETUATING TESTIMONY.

[No paragraphs in this vol. of the Digest.]

## IV. PRESUMPTION.

## (a) Of Death.

[No paragraphs in this vol. of the Digest.]

## (b) Generally.

[No paragraphs in this vol. of the Digest.]

## EXCISE.

See INTOXICATING LIQUORS; REVENUE.

## EXECUTION.

See also BANKERS, Nos. 5, 8; BANKRUPTCY, Nos. 29, 38; CHOSES IN ACTION; COMPANIES, No. 14; LANDLORD AND TENANT, No. 6; PRACTICE, XIII.]

1. *Writ of Fi. Fa. Issued after Debt Paid—Seizure of Goods—Damages for Trespass—Absence of Malice.*—When the total amount of a judgment debt has been paid, the judgment ceases to be of any force or effect. Execution levied thereunder is, therefore, a trespass, and an action will lie in respect thereof.

Decision of Div. Ct. ([1910] 1 K. B. 374; 79 L. J. K. B. 274; 101 L. T. 911) reversed.

CLISSOLD *v.* CRATCHLEY AND ANOTHER, [1910] 2 K. B. 244; 79 L. J. K. B. 635; 102 L. T. 520; 26 T. L. R. 409; 54 Sol. Jo. 442—C. A.]

See S. C., TRESPASS, No. 2.

**Execution—Continued.**

2. *Writ of Extent—Terms of Affidavit Required.*—A writ of extent was granted on an affidavit, in which it was sworn: "From inquiries I have made, I have ascertained and believe that the debt due to his Majesty from the said Emily Pridgeon" (the alleged debtor) "as aforesaid will be lost unless some more speedy course than the ordinary method of proceeding be forthwith had and taken to recover the same on behalf of his Majesty." There was no statement in the affidavit that the alleged debtor was insolvent, and no statement of facts to show that she was insolvent.

HELD—that the writ of extent must be set aside on the ground that the affidavit had not sufficiently shown that the debt was in danger.

R. v. PRIDGEON, [1910] 2 K. B. 543; 79 L. J. [K. B. 805; 103 L. T. 539; 26 T. L. R. 570; 54 Sol. Jo. 617—Bray, J.]

3. *Bankruptcy—Costs—Taxation—Sheriff's "Costs of Execution"*—*Costs of Interpleader Summons—Bankruptcy Act, 1890* (53 & 54 Vict. c. 71), s. 11—*Bankruptcy Rules, 1886—1890, rr. 118, 119.*—When a sheriff has seized goods under a writ of *fi. fa.*, and a claim has been made on the goods, and the sheriff has had to take out an interpleader summons, he is entitled to have his costs of possession pending interpleader, and his costs of the interpleader summons, even in cases where a receiving order has been made against the judgment debtor before the completion of the execution, and the costs have to be taxed as against the bankrupt's estate.

IN RE ROGERS. EX PARTE SHERIFF OF [SUSSEX, [1911] 1 K. B. 104; [1910] W. N. 238; 27 T. L. R. 59; 55 Sol. Jo. 78—Phillimore, J.]

See S. C., BANKRUPTCY, No. 19.

## EXECUTORS AND ADMINISTRATORS.

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### VI. ADMINISTRATION ACTION

See also COMPANIES, No. 22; DEATH DUTIES; DESCENT AND DISTRIBUTION; HUSBAND AND WIFE, No. 5; LANDLORD AND TENANT, No. 5; LIMITATION OF ACTIONS; PRACTICE, No. 33; TRUSTS AND TRUSTEES; WILLS.

#### I. EXECUTORS GENERALLY.

1. *Rights of Executors—Imperfect Gift—Money not Identified—Promise to Pay in the Future—Continuing Intention to Give—Donee Appointed Executor.*—The testator promised in writing that after a named future date the plaintiff should receive £2 a week, and died without altering his intention that the plaintiff should have this sum. He appointed the plaintiff one of his executors. The sum not having been paid regularly, she claimed the balance from the estate as

**I. Executors Generally—Continued.**

an imperfect gift, perfected by her acquiring the legal ownership of the estate as executrix.

**HELD**—that the principle laid down in *Strong v. Bird* ((1874) L. R. 18 Eq. 315; 43 L. J. Ch. 814; 30 L. T. 745; 22 W. R. 788—Jessel, M.R.) is not to be extended to a case where the alleged gift was merely a promise to give in the future a sum of money not identified nor separated from the rest of the testator's estate.

*In re Stewart, Stewart v. McLaughlin* ([1908] 2 Ch. 251) distinguished.

**IN RE INNES, INNES v. INNES**, [1910] 1 Ch. 188; [79 L. J. Ch. 174; 101 L. T. 633—Parker, J.

**2. Executor or Trustee—Statute of Limitations—Declaration of Trust—Ear-marking Entries—Express Trustees.**—Executors who are not also in terms appointed trustees, but who have duties imposed upon them, not as executors, but as trustees, hold the residue as soon as it has been ascertained, and as soon as their duties as executors have been performed, as express trustees within the meaning of the Statute of Limitations.

Executors, although not trustees under the provisions of the will by which they are appointed, may become express trustees by reason of entries in their accounts ear-marking certain sums as held for or on account of the persons interested.

**IN THE ESTATE OF GOMPERTZ, PARKER v. GOMPERTZ**, 55 Sol. Jo. 76—Warrington J.

**II. GRANT OF LETTERS OF ADMINISTRATION.****(a) Administration Bonds.**

[No paragraphs in this vol. of the Digest.]

**(b) As on an Intestacy.**

[No paragraphs in this vol. of the Digest.]

**(c) Citation.**

[No paragraphs in this vol. of the Digest.]

**(d) Creditors.**

See also No. 9, *infra*.

**3. No Known Relations—Pending Action—Probate Act, 1857** (20 & 21 Vict. c. 77), s. 73.]—The Court made a grant of administration of the estate of an intestate who had no known relations and who died pending proceedings to recover a sum due to him, to a creditor under sect. 73 of the Probate Act, 1857, without citing the next of kin, the creditor undertaking to bring the balance of the estate into Court in order to safeguard the Treasury.

**IN THE ESTATE OF HEERMAN**, [1910] P. 357; [27 T. L. R. 51; 55 Sol. Jo. 30—Deane, J.

**(e) Crown Rights.**

[No paragraphs in this vol. of the Digest.]

**(f) Cum Testamento Annexo.**

See also No. 7, *infra*.

**4. Legatees in Trust—No Direction to Pay Debts—No Executors Appointed—Form of Grant.**—A testatrix by will left all her estate

of the value of £2,200 to two persons in trust to pay the income to her husband for life, and she directed that after his death her estate was to be divided equally among her four children. There was no appointment of executors, and no direction to pay debts.

**HELD**—that the persons named as trustees were not, in the absence of a direction to pay debts, executors according to the tenor, and that the proper form of grant was one with the will annexed to them as universal legatees in trust.

**IN THE ESTATE OF MACKENZIE**, [1909] P. 305; [79 L. J. P. 4; 26 T. L. R. 39—Deane, J.

**(g) De Bonis Non.**

[No paragraphs in this vol. of the Digest.]

**(h) Foreigners.**

[No paragraphs in this vol. of the Digest.]

**(i) Limited Grants.**

**5. Injured Workman—Compensation—Death, Intestate, of Employer before Request for Compensation—Refusal of Next of Kin to Take Out Letters of Administration—Grant to Nominee of Workman—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13—*Probate (Ireland) Act, 1857* (20 & 21 Vict. c. 79), s. 78.]—A workman, injured in the course of his employment, had made no request for compensation before the death, intestate, of the employer. The next of kin acted as executors *de son tort*, and refused to take out letters of administration; and the workman, in view of sect. 13 of the Act, could not take proceedings against them. The Court gave liberty to a nominee of the workman to take out a grant under sect. 78 of the Probate (Ireland) Act, 1857, for the purpose only of substantiating proceedings to be taken by the workman for the recovery of compensation.

**IN THE GOODS OF W. BYRNE, DECEASED** (No. 1), [44 I. L. T. 98—Ross, J., Ireland.

**6. Injured Workman—Compensation—Death of Employer—Letters of Administration to Nominee of Workman Impounded—Probate of Will Discovered after Issue of such Letters of Administration Ordered.**]—Where a limited grant of administration was made under the circumstances set forth in "**IN THE GOODS OF W. BYRNE, DECEASED**, *supra*," and where a will of the deceased was discovered after the limited administrator had substantiated the proceedings taken by the workman for the recovery of compensation under the Workmen's Compensation Act, 1906, and after the administrator had made a request under sect. 17 of the Act that the amount awarded as compensation should be redeemed, the Court impounded the limited grant and empowered and directed the executrix named in the will to take out probate.

**IN THE GOODS OF W. BYRNE, DECEASED** (No. 2), [44 I. L. T. 192—Madden, J., Ireland.

**(k) Passing Over.**

See also No. 3, *supra*.

**7. Executor out of the Kingdom—Special Circumstances—Grant with Will Annexed to Sole**



## II. Grant of Letters of Administration—Continued.

*Beneficiary—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.*—Where the executor appointed under a will was out of the jurisdiction, and where there were urgent matters in connection with the estate of the deceased testator that required immediate attention, the court made a grant of letters of administration with the will annexed to the widow of the testator, who was the sole beneficiary.

IN THE GOODS OF WOHLGEMUTH, DECEASED.  
[54 Sol. Jo. 460—Deane, J.]

### (l) Presumption of Death of Next of Kin.

8. *Commorientes—Husband and Wife—Form of Oath to Lead Grants.*—Where a husband and wife perished in the same disaster, the Court allowed the form of oath to be varied by the insertion of a statement that the husband and wife perished at the time named, and that there was no reason to believe that the wife survived her husband.

*In the Goods of Ewart* ((1859) 1 Sw. & Tr. 258) and *In the Goods of Beynon* ([1901] P. 141), followed.

IN THE ESTATES OF M. BRUCE AND G. M.  
[BRUCE, 26 T. L. R. 381.]

### (m) Renunciation of Next of Kin.

*See No. 9, infra.*

### (n) Revocation of Grant.

9. *Administrator Believed to be Dead—Next of Kin Refusing to Act—Original Grant Revoked—New Grant to Creditors.*—Where the original administrator of a deceased intestate had disappeared, and the next of kin had refused to take any steps, the Court ordered the original grant to be revoked, and a fresh grant made to applicant creditors on affidavits being sworn as in *In the Estate of Saker* ([1909] P. 233).

IN THE ESTATE OF EDITH FRENCH, [1910] P.  
[169; 79 L. J. P. 56; 26 T. L. R. 374; 54 Sol. Jo. 361—Evans, Pres.]

### (o) Generally.

10. *Practice—Affidavit by Applicant.*—It is the practice for an applicant on motion to make an affidavit.

IN THE GOODS OF WOHLGEMUTH, DECEASED.  
[54 Sol. Jo. 460—Deane, J.]

## III. PROBATE.

### (a) Costs.

11. *Practice—Taxation—Quantum—Amount Allowed by Taxing Master—Discretion of Judge to Vary.*—On a mere question of *quantum*, the decision of the taxing registrar will not be reviewed by the Court except under very exceptional circumstances.

IN THE ESTATE OF OGILVIE, OGILVIE v.  
[MASSEY, [1910] P. 243; 79 L. J. P. 113; 103 L. T. 154—C. A.]

### (b) Effect.

[No paragraphs in this vol. of the Digest.]

### (c) Executor according to the Tenor.

12. *Trustees Named in Will—No Executive Directions.*—The Court will not find that trustees named in a will are executors according to the tenor, unless there is some direction in the document that they are to do some act of an executive character.

IN THE GOODS OF R. BROWN, DECEASED, 54  
[Sol. Jo. 478—Deane, J.]

### (d) Executor Misdescribed.

[No paragraphs in this vol. of the Digest.]

### (e) Foreign Wills.

13. *Testamentary Document—Domiciled English Person residing in France—English Form—French Form—Holograph Will—Incorrect Date—French Code—Power of French Courts to Amend—Admission of Documents to Probate in England—Wills Act, 1861 (24 & 25 Vict. c. 114).*—A domiciled Englishwoman residing in France drew up in her own handwriting and signed a document purporting to dispose of her personal estate, but owing to an inadvertent error it was incorrectly dated by her. Under French law a holograph will, in order that it may be held valid, must bear the date on which it is made, and the date, like the rest of the document, must be in the testator's own handwriting. Also, by French law, a wrong date is regarded as no date, and a holograph will, wrongly dated, is *prima facie* held to be invalid. But the invalidity may be rebutted by showing that the mistake was brought about by accident or inadvertence.

HELD—on the facts being proved as above, that such a document, although incorrectly dated, being otherwise a valid testamentary document according to French law, and the date having been inserted under such circumstances that the French courts would grant relief, is entitled to be admitted to probate in England, although it has not been adjudicated upon in the French courts.

LYNE v. DE LA FERTÉ AND DUNN, 102, L. T.  
[143—Bigham, Pres.]

### (f) Lost Will.

14. *Parts of Will Lost—Destruction since Testator's Death.*—A testator duly made his will. This will, a year after his death, was discovered mutilated by the destruction of parts thereof containing certain words of the will. The state of the will when discovered was due to the way in which it had been kept after the death of the testator. The testator had also made a draft will, as well as a pretended will, but no copy of his last will, and no oral evidence as to the precise form of the last will as it stood before becoming mutilated, was forthcoming. The Court made an order for probate of the will, in so far as the same was legible, and so far as the same was illegible, in the words and figures contained in a copy of said will, which, as regards

### III. Probate—Continued.

the missing portions, had been reconstructed from the context of the will, from the draft will, and from the pretended will.

IN THE GOODS OF A. WRIGHT, DECEASED.  
[44 I. L. T. 137—Madden, J., Ireland.

#### (g) Practice.

See also No. 11, *supra*: INJUNCTIONS,  
No. 1.

15. *Attesting Witnesses—Refusal to Make Affidavit—Order requiring Attendance for Examination—Probate Act, 1857 (20 & 21 Vict. c. 77). s. 24—Costs.*—Where two attesting witnesses to a codicil had refused, after proper application, to make a necessary affidavit as to the execution of the testamentary document, the Court ordered both to attend for examination unless they made the required affidavit within seven days, and also ordered them to pay the costs caused by their previous refusal.

IN RE BAYS, DECEASED, 54 Sol. Jo. 200—  
[Deane, J.

16. *Double Probate—Application to Executors for Account—Summons.*—An application for an order on executors to supply information necessary for obtaining double probate should be made by means of summons.

IN RE SARAH GRIFFIN, DECEASED, 54 Sol. Jo.  
[378—Evans, Pres.

#### (h) Revocation of Probate.

[No paragraphs in this vol. of the Digest.]

### IV. PAYMENT OF DEBTS AND DISTRIBUTION OF ESTATE.

See also POWERS, No. 4; WILLS, No. 9.

#### (a) Conveyance of Real Estate.

17. *Infant Executor—Appointing Person to Convey—Trustee Act, 1893 (56 & 57 Vict. c. 53). s. 33—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 2 (2).*—On a sale of real estate by executors where one of them is an infant the Court will make an order appointing a person to convey on behalf of the infant executor. But the Court will not make an order as to prospective sales.

IN RE LEWIS'S TRUSTS, 55 Sol. Jo. 140—Eve, J.

#### (b) Insolvent Estate.

[No paragraphs in this vol. of the Digest.]

#### (c) Payment of Debts.

[No paragraphs in this vol. of the Digest.]

#### (d) Payment of Legacies.

See also No. 20, *infra*; HUSBAND AND WIFE, No. 16; WILLS, No. 47.

18. *Interest on Legacy—Date from which Payable.*—A testator left the income of his residuary estate to J. for her life, and directed his trustees at her death to convert into money his residuary

estate and, after payment of testamentary expenses, to pay in the first place £1,000 free of duty to M. J. died within a month after the testator's death.

HELD—that the legacy to M. carried interest from the date of J.'s death, and not only from twelve months after the testator's death.

IN RE WHITE, WHITE *v.* SHENTON, 101 L. T.  
[780—Joyce, J.

19. *Annuity—Direction to set aside Sum Sufficient to Pay Annuity—Deficiency of Estate if Directions of Will Followed.*—A testatrix directed her trustees to set aside and invest a sum of money sufficient when invested to pay an annuity to her husband, and to apply the income and, if necessary, the corpus of the fund for that purpose, and that the fund should, on the dropping of the annuity, fall into her residuary estate. The estate was insufficient to set aside the sum as directed and to pay the pecuniary legacies in full, but was sufficient to pay them in full if the annuity were purchased.

HELD—that this latter course was, under the circumstances, the right one to be taken, and that the residuary legatee was not entitled to have the pecuniary legacies abated *pro rata* with the sum to be set aside for payment of the annuity.

IN RE COTTRELL, BUCKLAND *v.* BEDINGFIELD,  
[1910] 1 Ch. 402; 79 L. J. Ch. 189; 102  
L. T. 157—Warrington, J.

#### (e) Possible Future Liabilities.

See also GUARANTEE, No. 1.

20. *Annuities and Legacies Payable out of Residuary Real and Personal Estate—Administration Action—Provision for Annuities and Legacies—Sale of Realty.*—Where annuities and legacies are made payable out of residuary real and personal estate, and in an administration action the Court has made an order to set apart a sufficient sum to answer the annuities and legacies, the rest of the residuary real and personal estate is not thereby freed from the charge created in favour of the annuitants and legatees.

IN RE EVANS AND BETTELL'S CONTRACT,  
[1910] 2 Ch. 438; 79 L. J. Ch. 669; 103 L. T.  
181; 54 Sol. Jo. 680—Parker, J.

#### (f) Right of Retainer.

[No paragraphs in this vol. of the Digest.]

#### (g) Testamentary Expenses.

See DEATH DUTIES, I.

#### (h) Specific Legacies.

[No paragraphs in this vol. of the Digest.]

### V. POWERS AND LIABILITIES.

#### (a) Carrying on Business.

[No paragraphs in this vol. of the Digest.]

#### (b) Liabilities.

[No paragraphs in this vol. of the Digest.]

#### (c) Powers.

[No paragraphs in this vol. of the Digest.]

## VI. ADMINISTRATION ACTION.

See also No. 20, *supra*.

**21. Practice—Costs of Inquiries as to Persons Entitled to Share—Moieties of One Share—Numerous Inquiries as to One Moiety—R. S. C. Ord. 65, r. 14B.**—Moieties of a third share, directed by a will to be applied, in events which happen, on the respective trusts of the other two third shares, are “shares” within the meaning of Ord. 65, r. 14B, which provides that the costs of inquiries to ascertain the persons entitled to any legacy, money, or share, shall be paid out of such legacy, money, or share, unless the judge shall otherwise direct. And the rule does not mean that special directions are to be given by the judge without special reasons.

IN RE WHITAKER, DENISON-PENDER v. EVANS, [1910] W. N. 236; 130 L. T. Jo. 55; 45 L. J. N. C. 773—Neville, J.

## EXECUTORY DEVISE.

See TRUSTS; WILLS.

## EXHUMATION OF HUMAN REMAINS.

See BURIAL AND CREMATION.

## EXPLOSIVES.

[No paragraphs in this vol. of the Digest.]

## EXPULSION ORDER.

See ALIENS.

## EXTORTION.

See CRIMINAL LAW.

## EXTRADITION AND FUGITIVE OFFENDERS.

**1. Fugitive Offender—India—Trial by Judges Alone—“Unjust and Oppressive” to Return Fugitive—Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), ss. 2, 10, 35.**—*Per* Lord Alverstone, C.J., and Pickford, J. (Lord Coleridge, J., expressing no opinion upon the point)—The fact that a fugitive, whose return to another part of his Majesty's dominions is applied for

under the Fugitive Offenders Act, 1881, will, under the provisions of a statute in operation there, be tried by judges alone, and not by a jury, is not a ground for saying that his return would be “unjust and oppressive” within sect. 10 of the Act.

R. v. GOVERNOR OF BRITTON PRISON, EX PARTE SAVARKAR, 103 L. T. 473; 74 J. P. 417; 26 T. L. R. 512—Div. Ct.

See S. C., *infra*.

**2. Fugitive Offender—Committal for Return to India—Habeas Corpus—Application Refused—Appeal—“Criminal Cause or Matter”—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47—Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69).**—The King's Bench Division refused an application for a writ of *habeas corpus* made on behalf of a person who had been committed for removal to India under the Fugitive Offenders Act, 1881.

HELD—that such decision was given in a “criminal cause or matter” within the meaning of sect. 47 of the Judicature Act, 1873, and therefore that no appeal would lie to the Court of Appeal.

R. v. GOVERNOR OF BRITTON PRISON, EX PARTE [SAVARKAR, [1910] 2 K. B. 1056; 80 L. J. K. B. 57; 103 L. T. 473, 483; 26 T. L. R. 561; 54 Sol. Jo. 635—C. A.

**3. Fugitive Offender—Committal for Return to India—Habeas Corpus—Application Refused—Court of Appeal—Jurisdiction—“Superior Court”—Original Application for Relief—Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), ss. 2, 10, 35, 39 (1).**—Where the applicant obtained a rule *nisi* for a writ of *habeas corpus* and the King's Bench Division merely decided that the rule should be discharged, without adjudicating upon any application for relief under the Fugitive Offenders Act, 1881:—

HELD—that the Court of Appeal, as a “Superior Court” within the meaning of that expression in the Fugitive Offenders Act, 1881, had jurisdiction to entertain an original application for relief by the applicant under that Act.

R. v. GOVERNOR OF BRITTON PRISON, EX PARTE SAVARKAR, [1910] 2 K. B. 1056, 1067; 80 L. J. K. B. 57; 103 L. T. 473, 486; 26 T. L. R. 561—C. A.

**4. Fugitive Offender—Sedition—Committal for Return to India—Application for Relief—“Unjust and Oppressive”—Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), ss. 2, 10.**—The applicant was committed for removal to India under the Fugitive Offenders Act, 1881, the charges against him being, *inter alia*, the uttering of seditious speeches in India, and the subsequent uttering of seditious speeches in England, and the procuring of arms to be taken to India for use against the Government.

HELD—(1) that the connection of the charges with seditious acts in India and the fact that nearly all the witnesses to be called at the trial of the applicant were in India, constituted *prima facie* sufficient grounds for sending the

**Extradition and Fugitive Offenders—Continued.**  
 applicant to India to be tried; and (2) that the fact that the applicant would, under the provisions of a statute in operation in India, be tried by judges alone and not by a jury was not a ground for saying that his return to India would be "unjust and oppressive" within sect. 10 of the Fugitive Offenders Act, 1881.

R. v. GOVERNOR OF BRIXTON PRISON, EX  
 [PARTE SAVARKAR, 103 L. T. 473, 488; 26  
 T. L. R. 561—C. A.]

## EXTRAORDINARY TRAFFIC.

See HIGHWAYS.

## FACTORIES AND SHOPS.

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See also MASTER AND SERVANT.

### I. DEFINITIONS.

See No. 2, *infra*.

### II. EMPLOYMENT.

See No. 4, *infra*.

### III. MACHINERY.

See also MASTER AND SERVANT, No. 38.

**1. Unfenced Flywheel—Continuing Offence—Limitation of Time for Proceedings—Discovery of Offence—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), ss. 10, 17, 146.]**—The appellant, an inspector of factories, visited the respondents' factory in May, 1905, and, finding that the fly-wheel of an engine was not securely fenced as required by sect. 10 of the Factory and Workshop Act, 1901, he required them to fence it properly. He again visited the factory on March 12th, 1908, and, finding that the same wheel was not securely fenced, he again required them to fence it. Finding it on a third visit, on July 1st, 1908, still not securely fenced, he laid an information on July 22nd, 1908, against the respondents in respect thereof. The justices dismissed the information on the ground that the information had not been laid within three months after the date at which the offence came to the appellant's knowledge.

**HELD**—that there was a continuous series of offences in not securely fencing the flywheel; that the offence for which the respondents were convicted was discovered on July 1st, 1908; and that the justices were therefore wrong in dismissing the information on the ground that it had not been laid in time.

VERNEY v. MARK FLETCHER AND SONS, LD.,  
 [1909] 1 K. B. 444; 78 L. J. K. B. 292;  
 100 L. T. 348; 73 J. P. 131; 25 T. L. R. 248;  
 21 Cox, C. C. 783—Div. Ct.]

**2. Laundry—"Manufacturing Process"—Definition—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 149 (1)—Factory and Workshop Act, 1907 (7 Edw. 7, c. 39), s. 1.]**—The Factory and Workshop Act, 1901, s. 149 (1), defines non-textile factory as meaning, *inter alia*, certain classes of premises where mechanical power is used in aid of the manufacturing process carried on there.

By sect. 1 of the Factory and Workshop Act, 1907, laundries carried on by way of trade or for the purpose of gain or carried on as ancillary to another business or incidentally to the purposes of any public institution are added to the classes of premises referred to in the above definition.

**HELD**—that the words "manufacturing process" do not necessarily mean that something is being produced but refer to the business carried on, and that a laundry which is carried on for the purpose of gain and in which mechanical power is used for driving the machines used in aid of the work of washing clothes, is a non-textile factory within the definition.

OWNER v. COTTINGHAM SANITARY STEAM  
 [LAUNDRY CO., LD., 102 L. T. 571; 74 J. P.  
 219—Div. Ct.]

**3. Fencing—Hoist—Not Connected with Mechanical Power—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 10 (1).]**—Sect. 10 (1) of the Factory and Workshop Act, 1901, provides that "every hoist or teagle and every fly-wheel directly connected with the steam or water or other mechanical power, whether in the engine-house or not, and every part of any water-wheel or engine worked by any such power, must be securely fenced."

**HELD**—that the words "directly connected with the steam or water or other mechanical power" do not qualify the words "every hoist or teagle."

JACKSON v. A. G. MULLINER MOTOR BODY CO.,  
 [130 L. T. Jo. 178—Div. Ct.]

**4. Employment of Children—Cleaning Machinery in Motion—Taking By-product off Rollers—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 13.]**—In the respondents' factory a child of twelve was employed to remove the fluff from the rollers and board of a spinning machine while the machine was in motion by the aid of mechanical power. Unless the fluff was removed—necessarily while the machine was in motion—the rollers would become choked and the process would stop. The fluff was not mere refuse, but had a saleable value, and was in fact sold.



**III. Machinery—Continued.**

**HELD**—that the removal of the fluff from the rollers was a "cleaning of machinery" within sect. 13 of the Factory and Workshop Act, 1901, notwithstanding the fact that the fluff had a saleable value; and therefore that the respondents had infringed sect. 13 by allowing the child to be so employed.

**TAYLOR v. MARK DAWSON AND SON, LD.**  
[1911] 1 K. B. 145; 103 L. T. 508; 27 T. L. R. 45—Div. Ct.

**5. Dangerous Machinery—Absence of Fencing—Injury while Machinery under Repair—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 10 (1) (c), (d).]**—The owners of a factory are under a statutory obligation by virtue of sect. 10 of the Factory and Workshop Act, 1901, to securely fence all dangerous parts of their machinery in order to protect their workers, but are exempt from maintaining such fencing in an efficient state while the parts required to be fenced are under repair; and where, in breach of such statutory duty, they fail to provide any fencing for such machinery, and a worker is injured through a dangerous part of such machinery not being fenced while undergoing repairs, they cannot escape liability on the ground that the *causa causans* of the plaintiff's injury was not the omission to provide the fencing, but the omission to maintain it, and that consequently, although there may have been a breach of the obligation to provide the fencing, such breach was not the cause of the injury received by the worker from such machine while under repair.

**SCOTT v. BROOKFIELD LINEN CO., LD.**, [1910]  
[2 I. R. 509—Div. Ct., Ireland.

**6. Factories Where Wet Spinning Carried on—Humidity—Accommodation for Workers' Clothing—Regulations of February 26th, 1906—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 79.]**—Regulation 11 of the regulations of February 26th, 1906, made under sect. 79 of the Factory and Workshop Act, 1901, which requires that occupiers of factories in which wet spinning is carried on shall provide suitable and convenient accommodation "in which" to keep the clothing of the workers taken off before starting to work, does not impose an obligation on such occupiers to have a separate cloak-room outside the workroom.

What is "suitable and convenient accommodation" is a question of fact in each particular case. In the case of buildings erected before June 30th, 1905, it does not necessarily follow as a matter of law that if such accommodation is provided in a workroom it must take the form of a press or wardrobe.

**ERAUT v. ROSS**, [1910] 2 I. R. 591; 44 I. L. T. [217—Div. Ct., Ireland.

**FACTORS.**

*See* AGENCY; BAILMENTS; PAWN-BROKERS, No. 1.

**FAIRS.**

*See* MARKETS AND FAIRS.

**FALSE IMPRISONMENT.**

*See* TRESPASS.

**FALSE PERSONATION.**

*See* CRIMINAL LAW AND PROCEDURE.

**FALSE PRETENCES.**

*See* CRIMINAL LAW AND PROCEDURE.

**FALSE WARRANTY.**

*See* FOOD AND DRUGS.

**FALSIFICATION OF ACCOUNTS.**

*See* CRIMINAL LAW AND PROCEDURE.

**FAMILY ARRANGEMENTS.**

No paragraphs in this vol. of the Digest.]

**FENCES.**

*See* BOUNDARIES AND FENCES.

**FERÆ NATURÆ.**

*—See* ANIMALS.

**FEROCIOUS ANIMAL.**

*See* ANIMALS; NEGLIGENCE.

**FERRIES.**

*See* TRESPASS, No. 3.

**IV. MEANS OF ESCAPE FROM FIRE.**

[No paragraphs in this vol. of the Digest.]

**V. SANITATION AND VENTILATION.**

[No paragraphs in this vol. of the Digest.]

**VI. UNDERGROUND BAKEHOUSES.**

[No paragraphs in this vol. of the Digest.]

## FERTILIZERS AND FEEDING STUFFS.

See AGRICULTURE.

## FIERI FACIAS.

See EXECUTION; PRACTICE AND PRO-  
CEDURE.

## FINES.

See COPYHOLDS; REAL PROPERTY.

## FIRE, ESCAPE FROM.

See FACTORIES AND WORKSHOPS.

## FIRE, LIABILITY FOR.

See NEGLIGENCE; RAILWAYS.

## FIREARMS.

See CRIMINAL LAW.

## FIRE BRIGADE.

See PUBLIC HEALTH.

## FIRE INSURANCE.

See INSURANCE.

## FIRST FRUITS.

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### I. UNLAWFUL ANGLING.

[No paragraphs in this vol. of the Digest.]

### II. FISHING RIGHTS.

[No paragraphs in this vol. of the Digest.]

### III. SALMON FISHERY ACTS.

#### (a) Fishery Districts.

[No paragraphs in this vol. of the Digest.]

#### (b) Illegal Instruments.

1. "*Bags or Other Instruments*"—*Pockets of Coat—Right of Water Bailiff to Search—Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), s. 36.*—By sect. 36 of the Salmon Fishery Act, 1873, a water bailiff is entitled to search and examine all nets, baskets, bags, or other instruments used in fishing or in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught.

HELD—that the pockets of a coat worn by a person whom there was reasonable cause to suspect of having possession of fish illegally caught were "bags or other instruments" within the meaning of the section, and that a water bailiff was entitled to search them.

TAYLOR v. PRITCHARD, [1910] 2 K. B. 320;  
[79 L. J. K. B. 749; 103 L. T. 224; 74 J. P.  
372; 26 T. L. R. 496—Div. Ct.]

#### (c) Offences Generally.

[No paragraphs in this vol. of the Digest.]

### IV. OYSTER BEDS.

2. *Ship—Wreck—Ship Placed on Oyster Bed—Directions of Officer of Medway Conservancy Board—Liability of Board for Damage to Oyster Bed—Liability of Owner of Ship.*—A vessel took the ground in the river Medway and she was, by the directions of the Medway Conservancy Board's harbour master, removed to a place where she could be repaired. The harbour master was in charge of the operation of removing her, and, under his directions, she was put ashore at a spot where there were oyster beds leased to the plaintiff. The vessel remained in that position for some time after the owner had notice of the existence of the oyster beds. In an action against the Medway Conservancy Board and the owner of the vessel in respect of the damage done to the oyster beds:—

HELD—(1) that the Medway Conservancy Board were liable for the act of their harbour master in directing the vessel to be put where she was; but (2) that the owner of the vessel was not liable as without the harbour master's authority he could not have moved the vessel from the place where she was directed by that officer to be put.

THE BIEN, 27 T. L. R. 9—Deane J.

### V. SEA FISHERIES.

[No paragraphs in this vol. of the Digest.]

## FIXTURES.

See AGRICULTURE; BILLS OF SALE;  
DISTRESS; LANDLORD AND TENANT;  
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See also MEDICINE, NOS. 6, 7; WEIGHTS  
AND MEASURES.

### I. SALE OF FOOD AND DRUGS ACTS.

#### (a) Administration and Procedure.

1. *Milk—Onus of Proving Milk Genuine—Absence of Neutral Testimony—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 3—Sale of Milk Regulations, 1901, Art. 1.*—A farmer was charged with selling milk, which on analysis proved to be below the standard of quality required by the regulations. The accused, his mother, and servants gave evidence, which was believed but was uncorroborated by neutral testimony, to the effect that the milk had not been tampered with. The accused was convicted.

HELD, on appeal—that the evidence led on behalf of the accused was sufficient, without further corroboration, to overcome the presumption that the milk was not genuine, and that the conviction must be quashed.

LAMONT v. RODGER, 48 Sc. L. R. 60—Ct. of Justy.

#### (b) Analysis.

2. *Milk—Sample bearing Wrong Date—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 14.*—A farmer having been convicted of an offence under the Sale of Food and Drugs Acts, inasmuch as he had sold milk defective in quality, brought a suspension on the ground

that the sample analysed, upon which the conviction had been obtained, bore the date of the day preceding the day of the alleged offence.

HELD—that as the only object of the date on the sample was identification, and as the question of the identification of the sample analysed with that purchased from the accused was a question of fact, which could not be reopened, the bill of suspension must be refused.

HOWE v. KNOWLES, [1909] S. C. (J.) 61; 46 [Sc. L. R. 881; 6 Adam, 77—Ct. of Justy.

#### (c) Offences.

3. *Sale to Prejudice of Purchaser—Paregoric Asked For—Substitute Supplied—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 8.*—The servant of the respondent, who was a chemist, on being asked by the appellant for paregoric, sold to him a substance containing only half the amount of alcohol which should be present in a genuine sample of paregoric, and containing no tincture of opium, which is an essential constituent according to the formula given in the British Pharmacopœia. The bottle was labelled "Paregoric—Poison," but the word "poison" had been struck out in pencil and the word "substitute" added in pencil. On the hearing of an information against the respondent under sect. 6 of the Sale of Food and Drugs Act, 1875, for selling paregoric not of the nature, substance, and quality demanded, it was proved that paregoric was not sold because the respondent's servant, being an unqualified assistant, could not sell poison without committing an offence against the Pharmacy Acts.

HELD, on the special facts—that there was no sale to the prejudice of the purchaser, and that therefore the respondent had not committed the offence charged.

BUNDY v. LEWIS, 99 L. T. 833; 72 J. P. 489; [7 L. G. R. 55; 21 Cox, C. C. 744—Div. Ct.

4. *Coffee—Adulteration—Mixture of Chicory and Coffee—Label—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6.*—The appellants were summoned for selling to the prejudice of the purchaser coffee adulterated with 74 per cent. of chicory. It was proved that an inspector on asking for half a pound of coffee was supplied, at the price of 11d., with half a pound of a mixture of which 74 per cent. was chicory and 26 per cent. was coffee, and with two coupons entitling him to certain other articles. The article sold was labelled "Coffee Mixture," with the words "Sold as a mixture of chicory and coffee," in small print. The inspector's attention was not drawn to the label prior to the sale. The magistrates held that the offence charged had been committed, and that as in their opinion the chicory had been added fraudulently to increase the weight and bulk of the article sold, the label afforded no protection to the appellants.

HELD—that there was evidence to justify this finding.

STAR TEA CO. v. NEALE, 73 J. P. 511; 8 [L. G. R. 5—Div. Ct.

### I. Sale of Food and Drugs Acts—Continued.

5. *Butter—Margarine—Sale by Servant Contrary to Instructions of Master—Article not of the Nature, Substance, and Quality Demanded—Liability of Master for Unauthorised Act of Servant—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6.*—A customer in the respondent's shop asked for half a pound of salt butter, and was served by the respondent's assistant with a half-pound packet of mixed butter and margarine, which was not intended for sale, but had been made up for the respondent's own use and inadvertently left on the counter. The assistant in selling it was acting without the authority and contrary to the express instructions of the respondent that he was to sell butter always from the bulk and not in ready-made packages. Upon an information against the respondent under sect. 6 of the Sale of Food and Drugs Act, 1875, for selling an article which was not of the nature, substance, and quality of the article demanded:

Held—that the respondent was liable for the act of his servant, even though such act was unauthorised by him and was done contrary to his express instructions.

HOUGHTON v. MUNDY, 103 L. T. 60; 74 J. P. [377; 48 L. G. R. 838—Div. Ct.]

6. *Wilful Obstruction of Inspector—Mens rea—Publican's Manager Breaking Bottle of Whiskey Required as Sample by Inspector—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 16.*—Personal mens rea is a necessary ingredient of the offence of wilfully obstructing an inspector or other officer in the course of his duties under the Sale of Food and Drugs Acts.

T.'s husband, acting as T.'s manager, deliberately broke a bottle of whiskey while pretending to uncork it at the demand of an inspector of food and drugs, but did so without any authority or connivance of his wife.

HELD—that T. could not be convicted of wilful obstruction of the inspector under sect. 16 of the Sale of Food and Drugs Act, 1899.

TAYLOR v. NIXON, [1910] 2 I. R. 94; 44 I. L. T. [81—Div. Ct. Ireland.]

7. *Milk—Supplied on Contract—Price to be Determined by Richness in Fats—Sample Deficient in Fats—Evidence of Adulteration—Prejudice of Purchaser—Principal's Liability for Act of Carrier—Sale of Food and Drugs Acts, 1875 (38 & 39 Vict. c. 63) and 1879 (42 & 43 Vict. c. 30).*—T. employed his father P. to carry milk to a creamery in pursuance of a contract whereunder T. was to be paid according to the quality of the milk. P. had no authority to supply milk to any one else. K., an inspector under the Food and Drugs Acts, demanded a sample of the milk in course of delivery to the creamery, and on analysis it was found to be deficient by 6 per cent. in butter fats. T. was prosecuted for unlawfully selling, to the prejudice of the purchaser, debased milk, but the justices acquitted him on the ground that as T. had given P. no authority to do the act complained of T. was not responsible.

HELD—that as the contract contemplated the supply of pure milk, though it might vary in

Y.D.

quality, the supplying of adulterated milk was an act to the prejudice of the creamery, that the authority of P. was immaterial, and that the case must be sent back to the justices to convict.

KEENAN v. COSTELLOE, 44 I. L. T. 218—Div. [Ct., Ireland.]

### d) Taking Samples.

See also Nos. 4, 8, supra.

8. *Milk—Delivery in Several Barrels—Fair Sample—Analysis—Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), s. 3.*—A dairyman, in implement of a contract, delivered to his customer a consignment of forty-two gallons of milk in six barrels, from which samples were taken for analysis by an inspector under the Sale of Food and Drugs Acts. The method of sampling was as follows: Four of the five barrels of eight gallons each were poured separately into a ten gallon dish, being the largest dish available, and a sample of each taken; the last of the five barrels and the sixth barrel of two gallons were poured together into the dish and a sample of the ten gallons taken. The five samples thus obtained were then each separately analysed, and an average of the six results thus obtained was taken as representing the quality of the entire consignment.

HELD—that the method of sampling the milk, and of subsequently arriving at its quality, was fair and proper, and caused no prejudice to the accused.

LAMONT v. RODGER, 48 Sc. L. R. 60—Ct. of [Justy.]

### (e) Warranties.

9. *Verbal Renewal of Contract to Supply Pure Milk—Nothing Said as to Quality—Delivery as Before—Similar Label Stating Milk to be Pure—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 25.*—By a contract in writing dated December 7th, 1907, entered into between the appellant and a firm at Boscombe, the latter agreed to sell to the appellant a specified quantity of warranted pure new milk daily to March 31st, 1908. Between those dates milk was supplied to the appellant under that contract, and to each churn of milk delivered to him was attached a label stating *inter alia* that the milk was pure new milk. After March 31st, 1908, the firm at Boscombe continued to supply the appellant under a verbal arrangement, nothing being said as to the quality of milk to be supplied, but to each churn supplied thereafter there was as before a label attached similar to that already mentioned, stating the milk to be pure new milk. In proceedings against the appellant under the Sale of Food and Drugs Act, 1875, the appellant relied on the label as a warranty. The magistrate convicted the appellant, being of opinion that the label attached to the churn did not form part of a contract between the appellant and the Boscombe firm, and that, therefore, it did not constitute a written warranty within sect. 25 of the Act.

HELD—that the label attached to each churn was a sufficient warranty, and that, therefore, the



**I. Sale of Food and Drugs Acts—Continued.**

appellant was entitled to the protection of sect. 25 of the Sale of Food and Drugs Act, 1875.

LEWIS v. WEATHERITT, 100 L. T. 367; 73 J. P. [164; 25 T. L. R. 226; 7 L. G. R. 502; 21 Cox, C. C. 789—Div. Ct.]

**10. Milk — Written Warranty — Sufficiency Thereof—Connection with Particular Consignment—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 25.**—The respondent, who was summoned for selling milk not of the nature, substance, and quality demanded, proved that the milk in question had been supplied to him by a farmer who had for several years under a verbal contract supplied him with all the milk required by him, and that in September, 1908, the farmer had given him the following written warranty:—"I hereby guarantee and warrant that all milk supplied by me to you is of the nature, quality and substance demanded by law, and I give this warranty for the purposes of the Sale of Food and Drugs Act, 1899." The justices found that this document was intended by both parties to cover the delivery of milk in question, and that it did cover such delivery.

HELD—that in these circumstances there was a sufficient warranty within sect. 25 of the Sale of Food and Drugs Act, 1875.

Evans v. Weatheritt ([1907] 2 K. B. 80) applied.

DRAPER v. NEWNHAM, 102 L. T. 280; 74 J. P. [124; 8 L. G. R. 144—Div. Ct.]

**II. SALE OF UNSOUND MEAT.****(a) Generally.**

**11. Condemned Meat—Mens rea—Unsuccessful Prosecution—Compensation by Local Authority—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 116, 117, 308.**—To constitute the offence created by sect. 117 of the Public Health Act, 1875, *mens rea* need not be shown.

Meat belonging to the plaintiff and intended for the food of man was seized and condemned under sects. 116 and 117 of the Public Health Act, 1875, as unsound. In respect of this the plaintiff was prosecuted under sect. 117, but the summons was dismissed. The plaintiff thereupon made a claim for compensation under sect. 308 of the Public Health Act, 1875, and as the claim was not admitted it was referred to arbitration. The arbitrator by his award found that a portion of the meat was unsound, but that the plaintiff was not aware of this, and that the unsoundness and unfitness of the meat for the food of man could not have been discovered by any examination which the plaintiff or his servants could reasonably have been expected to make, and awarded compensation.

HELD—that the plaintiff had himself been in default, and was not entitled to recover compensation.

Walshaw v. Brighthouse Corporation ([1899] 2 Q. B. 286) questioned.

Decision of Channell, J. ([1910] 2 K. B. 46; 79 L. J. K. B. 578; 74 J. P. 165; 26 T. L. R. 378; 8 L. G. R. 430) reversed.

HOBBS v. WINCHESTER CORPORATION, [1910] 2 K. B. 471; 79 L. J. K. B. 1123; 74 J. P. 413; 102 L. T. 841; 26 T. L. R. 557; 8 L. G. R. 1072—C. A.]

**12. Condemned Meat—Mens rea—Compensation—Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), ss. 132, 133, 274.**—A pig having been seized as unsound under sect. 132 of the Public Health (Ireland) Act, 1878, by a sanitary officer and condemned by a justice under sect. 133, a claim for compensation was made by the owner Smith, and an arbitration held under sect. 274. The award followed the language of sect. 274, and awarded £32 as the amount of compensation for the damage sustained by Smith without being himself in default. On a motion to set aside the award:—

HELD—that damage for which compensation can be obtained under sect. 274 means actionable damage, and does not include trade loss by reason of the publication of the proceedings before the justices condemning the carcase.

HELD ALSO—that there was no liability for damage unless the carcase was sound when seized, inasmuch as it was not necessary to show *mens rea*.

IN RE AN ARBITRATION BETWEEN SMITH AND [BELFAST CORPORATION, [1910] 2 I. R. 285; 44 I. L. T. 123—Gibson, J., Ireland.]

**13. "Animal or Article"—Penalty—Liability of Accused for each Portion of One Animal—Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38), s. 43.**—The Public Health (Scotland) Act, 1897, s. 43 (2), enacts: "If it appears to a sheriff, magistrate, or justice that any animal or article which has been seized, or is liable to be seized under this section, is diseased or unsound or unfit for food of man, he shall condemn the same, . . . and the persons to whom the same belongs . . . or in whose possession or in whose premises the same was found, shall be liable to a penalty not exceeding £50 for every animal or article, or if the article consists of fruit, vegetables, corn, bread, or flour, for every parcel thereof so condemned." A butcher was convicted on a complaint charging him with being in possession of ten pieces of diseased meat which were exposed or deposited for sale in his premises. The pieces of meat were all portions of one animal. He was sentenced to a penalty of £250, and thereafter appealed on the ground that he was only liable to a single penalty of £50 in respect of the animal in question.

HELD—that the accused was liable to a penalty of £50 in respect of each portion of meat.

KENN v. BELL, [1910] S. C. (J.) 13; 47 Sc. L. R. [160; 6 Adam, 192—Ct. of Justy.]

**(b) In London.**

[No paragraphs in this vol. of the Digest.]

### III. SALE OF BREAD.

14. *Sale Otherwise than by Weight*—"Fancy Bread"—Difference in Size and Shape but not in Quality—Bread Act, 1836 (6 & 7 Will. 4, c. 37), s. 4.]—To constitute "fancy bread" within the meaning of sect. 4 of the Bread Act, 1836, it is not essential that the bread sold under that description should differ in quality from ordinary bread. If bread is sold of a size and shape unmistakably different from an ordinary loaf, there is evidence on which justices can properly find that it is "fancy bread."

BAILEY v. BARSBY, [1909] 2 K. B. 610; 78 [L. J. K. B. 974; 100 L. T. 370; 73 J. P. 138; 25 T. L. R. 224; 7 L. G. R. 381; 21 Cox, C. C. 795—Div. Ct.

### IV. MARGARINE.

See also No. 7, *supra*.

15. *Sale in Paper Wrapper—Fancy Name Approved by Board of Agriculture—Printed on Wrapper*—"Karmo Margarine"—Margarine Act, 1887 (50 & 51 Vict. c. 29), s. 6—*Sale of Food and Drugs Act*, 1899 (62 & 63 Vict. c. 51), s. 6—*Butter and Margarine Act*, 1907 (7 Edw. 7, c. 21), s. 8.]—Sect. 8 of the Butter and Margarine Act, 1907, which provides that a person dealing in margarine shall be guilty of an offence under that Act if "in any wrapper" enclosing margarine he describes it by any name other than "margarine" or a name combining the word "margarine" with a fancy or other descriptive name approved by the Board of Agriculture and Fisheries, has not by implication repealed the provisions of sect. 6 of the Margarine Act, 1887, as amended by the Sale of Food and Drugs Act, 1899, to the effect that margarine when sold by retail shall only be delivered, save in a package duly branded, in a paper wrapper "on which" shall be printed the word "margarine," "and no other printed matter shall appear on the wrapper."

A person sold a kind of margarine called "Karmo," a name approved by the Board of Agriculture and Fisheries under sect. 8 of the Butter and Margarine Act, 1907, in a paper wrapper on which the words "Karmo Margarine" were printed.

HELD—that he was rightly convicted of an offence under sect. 6 of the Margarine Act, 1887, as amended by sect. 6 of the Sale of Food and Drugs Act, 1899.

WILLIAMS v. BAKER, [1910] W. N. 280; 130 [L. T. Jo. 178—Div. Ct.

### FOREIGN ATTACHMENT.

See PRACTICE AND PROCEDURE.

### FOREIGN ENLISTMENT.

See CRIMINAL LAW.

### FOREIGN JUDGMENT.

See CONFLICT OF LAWS.

### FOREIGN LAW AND FOREIGNERS.

See CONFLICT OF LAWS.

### FORESHORE.

See WATER AND WATERCOURSES.

### FORFEITURE.

See CRIMINAL LAW; FISHERIES; LANDLORD AND TENANT; REAL PROPERTY; SETTLEMENTS; WILLS.

### FORGERY.

See BANKERS AND BANKING; CRIMINAL LAW.

### FRANCHISE.

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### FRAUD.

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### FRAUDS, STATUTE OF.

See CONTRACT; SALE OF GOODS; SALE OF LAND.

### FRAUDULENT AND VOIDABLE CONVEYANCES.

See BANKRUPTCY; SETTLEMENTS.

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## FRIENDLY SOCIETIES.

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## III. UNREGISTERED SOCIETIES . . . . . 233

[No paragraphs in this vol. of the Digest.]

See also CLUBS; INDUSTRIAL SOCIETIES

## I. REGISTERED SOCIETIES.

## (a) Disputes.

1. *Member Claiming on Behalf of a Member—Jurisdiction to Order Him to Pay Costs—Expulsion for Non-payment—Ultra Vires—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 68.*—The appellant, a member of a friendly society, made a claim under the rules for sick allowance in respect of his son, who was also a member of the society. The society decided on one point against the appellant, who was ordered to pay the costs, and as he refused to do so he was suspended under the rules. In an action by him for an injunction and for damages in respect of his suspension:—

**HELD**—that the rules were not *ultra vires*, and that under sect. 68 of the Friendly Societies Act, 1896, the Court had no jurisdiction to interfere with the decision which had been given.

Decision of C. A. ([1908] 2 K. B. 458; 77 L. J. K. B. 756; 98 L. T. 919; 24 T. L. R. 542) affirmed.

CATT v. WOOD AND OTHERS, [1910] A. C. 404; [79 L. J. K. B. 782; 102 L. T. 614; 26 T. L. R. 455; 47 Sc. L. R. 907—H. L.

## (b) Dissolution.

2. *Winding-up—Compulsory Order—Society not Registered as a Company—Execution—Application to Restrain Sale—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 140, 238.*—A creditor of a friendly society, registered under the Friendly Societies Acts but not under the Companies Acts, petitioned for its compulsory winding-up as an unregistered company under sect. 268 of the Companies (Consolidation) Act, 1908. It appeared that another creditor had recovered judgment in the King's Bench Division against the society; that the sheriff was in possession of its property and that a forced sale

was feared which would seriously injure the society and the other creditors.

**HELD**—that an order for compulsory winding-up was within the jurisdiction of the Court and should be made, but that any application to stay execution on the judgment obtained in the King's Bench Division before the winding-up must be made in that division.

IN RE TWENTIETH CENTURY EQUITABLE [FRIENDLY SOCIETY, [1910] W. N. 236; 130 L. T. Jo. 33; 45 L. J. N. C. 726—Neville, J.

## (c) Nomination of Life Policy.

[No paragraphs in this vol. of the Digest.]

## (d) Officers.

3. *Debt Due to Society from Treasurer—Bankruptcy after Ceasing to be Treasurer—Preferential Payment—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 34, 35.*—Under sect. 35 of the Friendly Societies Act, 1896, the trustees of a friendly society are, upon the bankruptcy of the person who was treasurer of the society, entitled to be paid out of his estate the balance due from him to the society in respect of moneys he has received on its behalf, notwithstanding that at the date of his bankruptcy he has ceased to be an officer of the society.

In re Miller ([1893] 1 Q. B. 327) applied.

IN RE EILBECK, EX PARTE TRUSTEES OF THE [GOOD INTENT LODGE, No. 978, OF THE GRAND UNITED ORDER OF ODDFELLOWS, [1910] 1 K. B. 136; 79 L. J. K. B. 265; 101 L. T. 688; 26 T. L. R. 111; 54 Sol. Jo. 118; 17 Manson, 1—Phillimore, J.

## (e) Rules.

See No. 1. *supra*.

## (f) Generally.

4. *Conversion into Company—Special Resolution—Assent of Members—Objects of Company—Exceeding the Scope of the Objects of the Society—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 8, 70 (3), 71, 74.*—A friendly society registered under the Friendly Societies Act, 1896, by special resolution at meetings convened in manner provided for by its rules, but without any attempt to obtain the assent of a very large number of its members, resolved to convert itself into a company limited by guarantee under a memorandum and articles of association, which altered the position of members of the society and which extended and substantially altered the nature of the objects of the society, both as defined by its own rules and as restricted by the Friendly Societies Act, 1896, s. 8.

**HELD**—that the society could not, under the guise of conversion into a company in pursuance of sect. 71 of the Friendly Societies Act, 1896, by a mere special resolution as defined in sect. 74, and without the assents required by sect. 70, sub-sect. 3, be transformed into a company with quite different objects and constituted quite differently from the society.

### I. Registered Societies—Continued.

Decision of Joyce, J. ([1909] W. N. 252; 26 T. L. R. 115; 54 Sol. Jo. 101) affirmed.

BLYTHE v. BIRTLEY, [1910] 1 Ch. 228; 79 [L. J. Ch. 315; 101 L. T. 842; 26 T. L. R. 215; 17 Manson, 165—C. A.

[See Companies (Converted Societies) Act, 1910 (10 Edw. 7 and 1 Geo. 5, c. 23).]

5. *Conversion into Limited Company—Objects of Company—Exceeding the Objects of the Society—Friendly Societies Act, 1896* (59 & 60 Vict. c. 25), ss. 8, 71.]—Where a friendly society registered under the Friendly Societies Act, 1896, has been converted into and registered as a company limited by guarantee under a memorandum and articles of association which greatly extend the objects of the society as restricted by the Friendly Societies Act, 1896, the company cannot be restrained from exercising its powers under such memorandum at the instance of a shareholder of the company.

*Blythe v. Birtley* (*supra*) distinguished.

Decision of Eve, J. (102 L. T. 276; 26 T. L. R. 357; 54 Sol. Jo. 361) affirmed.

McGLADE v. ROYAL LONDON MUTUAL [INSURANCE SOCIETY, LD., [1910] 2 Ch. 169; 79 L. J. Ch. 631; 103 L. T. 155; 26 T. L. R. 471; 54 Sol. Jo. 505—C. A.

See S. C. under COMPANIES, XVII. (a).

6. *Conversion into Limited Company—Extension of Insurance Business—Alteration of Memorandum—Companies (Converted Societies) Act, 1910* (10 Edw. 7 & 1 Geo. 5, c. 23)—*Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 9 (1), (3).]—The effect of the Companies (Converted Societies) Act, 1910, is to validate all acts done up to the passing of the Act by friendly societies which have been converted into companies under the Companies (Consolidation) Act, 1908, and which before conversion carried on insurance business of any description as part of the objects of the society. But the Act does not enable the companies after the passing of the Act to carry on insurance business beyond that authorised by the rules of the society at the date of conversion. An alteration of the memorandum of such a company may be sanctioned in a proper case without the company being first required to bring its memorandum into conformity with its real powers.

IN RE ROYAL LONDON MUTUAL INSURANCE [SOCIETY, LD., [1910] W. N. 226; 55 Sol. Jo. 46—Eve, J.

### II. COLLECTING SOCIETIES AND INDUSTRIAL ASSURANCE COMPANIES.

[No paragraphs in this vol. of the Digest.]

### III. UNREGISTERED SOCIETIES.

[No paragraphs in this vol. of the Digest.]

## FUGITIVE OFFENDERS.

See EXTRADITION AND FUGITIVE OFFENDERS.

## GAME.

### I. GAME. COL.

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### II. SPORTING RIGHTS, ETC. . . . . 235

See also CRIMINAL LAW.

### I. GAME.

#### (a) Ground Game.

1. *Employment of Spring Traps—Grantee of Exclusive Right of Killing Rabbits—Not Occupier of Land—Ground Game Act, 1880* (43 & 44 Vict. c. 47), s. 6.]—The appellant, who had, under a lease, the exclusive right of killing rabbits on certain sand hills on land not occupied by him, was convicted under sect. 6 of the Ground Game Act, 1880, of having unlawfully employed spring traps for the purpose of killing rabbits otherwise than in rabbit holes.

HELD—that the conviction must be quashed, as sect. 6 does not apply either to an owner who occupies his land or to a person in the position of the appellant, who, by virtue of a grant from the owner, exercises rights over, but does not occupy the land.

MAY v. WATERS, [1910] 1 K. B. 431; 79 L. J. [K. B. 250; 102 L. T. 180; 74 J. P. 125; 26 T. L. R. 239—Div. Ct.

2. *Occupier—Tenant—No Reservation of Sporting Rights—Trapping Rabbits—Ground Game Act, 1880* (43 & 44 Vict. c. 47), s. 6.]—The respondent, who was the tenant and occupier of a farm under a verbal yearly tenancy granted to him by the owner, set a number of spring traps at various places on the farm for the purpose of catching rabbits. The traps were not set in rabbit holes in accordance with sect. 6 of the Ground Game Act, 1880. There was no reservation by the owner of any sporting rights over the farm.

HELD—that sect. 6 of the Ground Game Act, 1880, applied, and that the respondent was liable to the penalty imposed by that section.

*Saunders v. Pitfield* (1888) 16 Cox, C. C. 369) followed.

WATERS v. PHILLIPS, [1910] 2 K. B. 465; [79 L. J. K. B. 1062; 103 L. T. 288; 74 J. P. 313; 26 T. L. R. 564—Div. Ct.

#### (b) Licences.

3. *Game Pheasants Bought for Breeding Purpose—Seller and Purchaser not Licensed to Deal in Game—Liability to Penalty—Game Act, 1831* (1 & 2 Will. 4, c. 32), s. 27.]—The word "game" in sect. 27 of the Game Act, 1831, applies to live as well as dead game; it applies also to game which has never been wild; for example, to pheasants reared in captivity and kept for breeding purposes. If, therefore, a person who is not licensed to deal in game purchases game pheasants for breeding purposes from a person not licensed



### I. Game—Continued.

to deal in game he commits an offence against sect. 27 of the Act.

COOK v. TREVENER, [1911] 1 K. B. 9; [1910] [W. N. 211; 74 J. P. 469; 27 T. L. R. 8—Div. Ct.]

### (c) Trespass and Poaching.

[No paragraphs in this vol. of the Digest.]

## II. SPORTING RIGHTS.

See also LANDLORD AND TENANT, No. 2.

4. *Trespass—Right of Tenant of Sporting Rights over Land to Check Progress of Fire by Burning Strips of Heather—Necessity of Step.*—The defendant was a gamekeeper employed by the tenant of sporting rights over heather land leased from the plaintiff. A fire having broken out in the heather the defendant sought to check its progress by setting fire to and so laying bare other strips of heather. In an action against the defendant for damages, the county court judge held that the defendant had no right to set fire to the heather, and that he was, therefore, liable in damages to the plaintiff.

HELD—that the question whether the defendant had a right to burn the heather depended upon whether it was necessary to do so for the preservation of the rest of the land over which his employer had sporting rights, and that as the question of such necessity had not been considered by the county court judge the case must be sent back for a new trial.

COPE v. SHARPE, [1910] 1 K. B. 168; 79 L. J. [K. B. 281; 102 L. T. 102; 26 T. L. R. 172—Div. Ct.]

## GAMING AND WAGERING.

I. GAMING CONTRACTS . . .	COL. 235
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See also CRIMINAL LAW; INTOXICATING LIQUORS.

### 1. GAMING CONTRACTS.

1. *Betting—Money Paid under Mistake of Fact—Right to Recover Money Back—Gaming Acts, 1845 (8 & 9 Vict. c. 109), s. 18; and 1892 (55 & 56 Vict. c. 9), s. 1.*—The plaintiff, at the defendant's request, put money on a horse called Jim Crook, which, when the race was won, came in second. Objection being taken to the horse Rosevern, which came in first, the stewards decided that Jim Crook was the winner. Thereupon the plaintiff paid the winnings—£275—to the defendant. Thereafter, on appeal to the committee of the Jockey Club, the stewards' decision was overruled, and Rosevern was declared the winner. The plaintiff thereupon paid back part of the money which had been paid to him by various persons after the stewards' decision, and then asked the defendant to refund to him the amount so paid back,

but the defendant refused. Notwithstanding the objection taken by the defendant to refund the money, the plaintiff repaid the balance which had been paid to him in respect of the bet. In an action claiming to be indemnified by the defendant for the amount so returned by the plaintiff:—

HELD—that the plaintiff was not entitled to recover, inasmuch as either the dispute was whether the money was won or not and depended upon the construction of a wagering contract, which in law was null and void, or, if the plaintiff was betting as agent for the defendant, the case came within sect. 1 of the Gaming Act, 1892.

*Semble*, the rule that money paid under a clear mistake of fact can be recovered back applies although the payment was made in connection with a betting transaction.

GASSON v. COLE, 26 T. L. R. 468—Channell, J.

2. *Betting—Forbearance to Make Defendant's Default Public—New Contract—Gaming Acts, 1835 (5 & 6 Will. 4, c. 41), s. 1; and 1845 (8 & 9 Vict. c. 109), s. 18.*—The plaintiff and defendant were book-makers, and as the result of certain betting transactions between them a sum of £30 10s. was due from the defendant to the plaintiff. In an action to recover this amount, the plaintiff stated that when the debt became due the defendant asked for time to pay, and requested that the matter might be kept absolutely confidential, as if it got about it would do him a lot of harm. The plaintiff agreed to give defendant time, and promised to keep the matter confidential. He stated in his evidence that, if the matter had got about, the defendant would have been finished as a bookmaker. The county court judge gave judgment for the plaintiff, holding that a new contract had been entered into between the parties by which the plaintiff forebore to sue the defendant or declare him a defaulter in consideration of the defendant's promise to pay the debt at a future time.

HELD—that there was evidence upon which the county court judge could come to that conclusion.

WILSON v. CONOLLY, 103 L. T. 461; 27 T. L. R. [7—Div. Ct.]

3. *Deposit of Money to be Used for Speculation in Stocks—Deposit to be Repaid if No Profit Made—Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18.*—The defendant sent out circulars in which he stated that if the persons receiving them would contribute certain sums to a "trust," he would operate in specified stocks, and if at the end of 90 days those stocks stood at a higher figure than at the beginning, he would divide the profit, less 10 per cent., among the contributors, but if there were no profits he would return the original subscription in full. The plaintiff paid a sum to the defendant on the terms of the circulars, and profits having been made by the speculation in the stocks, he sued the defendant to recover same and his deposit.

HELD—that the contract between the parties

**I. Gaming Contracts—Continued.**

was a wagering contract, and that the plaintiff was therefore not entitled to recover.

**RICHARDS v. STARCK**, 27 T. L. R. 29—Channell, [J.]

**4. Deposit of Money to be Used for Speculation in Stocks—Deposit to be Repaid if no Profit Made—Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 18.**—The defendants invited persons to contribute sums to a "trust," and with the sums so subscribed they were to operate in certain stocks for a period of 90 days; if at the end of that time a profit was made on the stocks the profit would be divided, less 10 per cent., among the subscribers; if no profit were made the subscribers would receive back their subscriptions in full. The plaintiff subscribed £96 on these terms and was informed by the defendants at the end of 90 days that no profit had been made, but that he would receive back the amount of his subscription by August 31, 1910. Later, the plaintiff was asked by the defendants to send an account of the amount due to him to S., an accountant who was inquiring into the accounts and would deal with them. The plaintiff applied to S. for the amount due; S. replied that it would take a considerable time to deal with the accounts and that he could not then comply with the plaintiff's request. The money not having been paid, the plaintiff sued to recover the amount.

**HELD**—(1) that the contract entered into by the plaintiff was a wagering contract, and therefore was not enforceable, and (2) that there was no evidence of a fresh promise by the defendants upon good consideration to repay the money.

**WHITELAW v. MCKINLEY, ALEXANDER, AND [SONS]**, 27 T. L. R. 49—Channell, J.

**5. Stock Exchange—Outside Broker—Gambling in Differences—Service Agreement with Clerk—Gaming Act, 1892 (55 & 56 Vict. c. 9).**—A clerk entered into a service agreement with a firm of outside brokers whose business consisted mainly in dealing in "differences," no stock as a rule being purchased or sold.

**HELD**—that the service agreement was a contract for the payment of wages in consideration of services rendered in carrying on a betting business, and therefore was void under the Gaming Act, 1892.

**ELLIOTT v. HUNTER**, 128 L. T. Jo. 196—Leigh [Clare, V.-C.]

**II. GAMES AND GAMING HOUSES.**

See Nos. 1, 2, *supra*.

**III. BETTING HOUSES AND BETTING.**

**6. Public-house Used for Betting—Not with Knowledge of Licensee—Permission of Person assisting in Management—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.**—A. used a public-house for the purpose of betting with persons resorting thereto. He did this with the knowledge and connivance of B., the licensee's son, who assisted the licensee in conducting the

business of the public-house. The licensee was present in and managing the public-house, but the justices held that the offence charged against her was a personal offence, and dismissed the summons against her because they were not satisfied upon the evidence that she knew that betting was going on. The justices convicted A. of using the public-house for the purpose of betting with persons resorting thereto, and convicted B. of aiding and abetting A. to commit the offence.

**HELD**—that, as B. was in fact assisting in conducting the business of the public-house, he was a person clothed with the licensee's authority who could give permission to A. to use the premises for the purpose of betting with persons resorting thereto; that no distinction could in this case be drawn between being in charge and assisting in the management of the public-house; and that the conviction of A. and B. was therefore right.

**R. v. Dearville** ([1903] 1 K. B. 468) explained and distinguished.

**BUXTON AND ANOTHER v. SCOTT**, 100 L. T. 390; [73 J. P. 133; 25 T. L. R. 239; 21 Cox, C. C. 799—Div. Ct.]

**7. Betting House—Person "Found" in Betting House—Person Coming to Premises after Police had Taken Possession—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 11.**—A person may be "found" on premises within the meaning of sect. 11 of the Betting Act, 1853, although he only comes thereon after the police have entered the premises. But the power of arrest given to the police by that section is limited to the arrest of persons found on the premises for the purpose of betting.

**DAVIS v. SLY**, 26 T. L. R. 460—Darling, J.

**8. Place Used for Betting—Bar of Public-house—Permission—Physical User—Misdirection—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3.**—Conviction of the appellant under the Betting Act, 1853, for having used a room in a public-house for the purpose of betting with persons resorting thereto quashed on the ground that, as the deputy-recorder had omitted to explain to the jury that the user of the room must mean a user with the sanction of the landlord or his servants, the jury might have supposed that a mere physical user without such sanction was enough to justify conviction, and, further, because they might have thought from the summing-up that if the appellant went to the room and did ready money betting there he would be liable in any circumstances.

**R. v. MOSS**, 74 J. P. 214; 26 T. L. R. 323—[C. C. A.]

**9. "Public Place"—Using Public Place for Betting—"Frequenting and Using"—Access by Payment—Bye-law.**—A bye-law prohibited the frequenting and using of a public place for the purpose of betting. By the definition section of the bye-law a public place included, *inter alia*, any open space to which the public had access for the time being. The appellant was convicted

### III. Betting Houses and Betting.—Continued.

under the bye-law for having attended at an athletic ground to which the public had access on payment of an entrance fee, and made bets there.

**HELD**—that the word “frequenting” meant being sufficiently long in the place to effect the object aimed at, namely, to bet, and that the athletic ground was a “public place” notwithstanding that a payment had to be made to gain admission.

**AIRTON AND ANOTHER v. SCOTT**, 100 L. T. 393; [73 J. P. 148; 25 T. L. R. 250; 22 Cox, C. C. 16—Div. Ct.

10. “Public Place”—“Unenclosed Ground to which the Public have Unrestricted Access”—*Street Betting Act*, 1906 (6 Edw. 7, c. 43), s. 1 (1), (4).—The *Street Betting Act*, 1906, s. 1, enacts:—“(4) For the purpose of this section . . . the words ‘public place’ shall include any public park, garden, or sea-beach, and any unenclosed ground to which the public for the time being have unrestricted access. . . .”

A field lying between two streets, which had by feuing been reduced to about one acre in extent, was private property, and was let at a rent of £4 per annum to two persons for betting purposes. It had at one time been fenced from the streets by wire fences, but for more than a year the fences had been absolutely in disrepair, and the public had used it without restraint as a public place and recreation ground. There were well-defined tracks across it, and it had been constantly used as a short cut to the railway station.

**HELD**—that the field was a “public place” within the meaning of the *Street Betting Act*, 1906.

**BRESLIN AND ANOTHER v. THOMPSON**, [1910] [S. C. (J.) 5; 47 Sc. L. R. 154; 6 Adam, 134 —Ct. of Justy.

11. “Public Place”—*Railway Station Platform—Construction of Statute—Prevention of Gaming (Scotland) Act*, 1869 (32 & 33 Vict. c. 87), s. 3.—The platform of a railway station is a “public place” within the meaning of that expression in the words “in any public place or in any grounds open to the public or in any public conveyance” in sect. 3 of the *Prevention of Gaming (Scotland) Act*, 1869.

Observations on the rules to be followed in construing statutes.

**WOODS v. LINDSAY**, [1910] S. C. (J.) 88; 47 [Sc. L. R. 77—Ct. of Justy.

12. *Betting—Racecourse—Field Adapted for Annual Sports and Horse-races—Street Betting Act*, 1906 (6 Edw. 7, c. 43), s. 2.—A field, not registered as a racecourse and not permanently laid out or used as a racecourse, but adapted for the occasion of an annual athletic sports and horse-races meeting, is not “ground used for the purpose of a racecourse for racing with horses” within the meaning of the exemption from the

*Street Betting Act*, 1906, contained in sect. 2 of the Act.

**STEAD v. ACKROYD**, [1911] 1 K. B. 57; [1910] [W. N. 227; 80 L. J. K. B. 78; 74 J. P. 482—Div. Ct.

13. “Street”—“Public Passage”—*Recess within Private Property but Leading off Public Road, Closed at One End by a Door usually kept Shut—Street Betting Act*, 1906 (6 Edw. 7, c. 43), s. 1 (1) and (4).—The *Street Betting Act*, 1906, s. 1, enacts:—“(4) For the purpose of this section the word ‘street’ shall include any highway, and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not. . . .”

A small piece of ground, the property of a railway company, lying between the railway platform and the road giving access to the station, formed a recess open to the road, but was closed on the side next the station by a door usually kept shut, except when at the pleasure of the railway company it was used as an emergency entrance to the station.

**HELD**—that it was not a “public passage,” and, therefore, not a “street” within the meaning of the Act.

*Quare*—(1) whether the recess in question was a “public place” within the meaning of the Act, and (2) whether it might not have been libelled merely as part of the road.

**LANG v. WALKER**, [1910] S. C. (J.) 41; 47 [Sc. L. R. 162; 6 Adam, 180—Ct. of Justy.

14. “Street”—*Betting—Person Standing on a Railway Abutting on a Street Receiving Slips and Money from Persons in the Street—Burgh Police (Scotland) Acts*, 1903 (3 Edw. 7, c. 33), s. 51, and 1892 (55 & 56 Vict. c. 55), s. 4 (31).—The *Burgh Police (Scotland) Act*, 1903, s. 51, enacts:—“If any person who conducts business of any kind in lotteries, betting, or gaming, shall in any street engage in lotteries, betting, or gaming,” he shall be liable to a penalty. The *Burgh Police (Scotland) Act*, 1892, s. 4 (31), in defining the word “street,” enacts that “street” shall not include, *inter alia*, a place “forming part of any . . . railway.”

A bookmaker stood on a railway abutting on a street, but separated from it by a fence, and leaning over, and stretching his hand over the fence, took from persons in the street betting slips and money, and also settled bets in a similar manner.

**HELD**—that he was rightly convicted of an offence.

**QUEEN v. WILSON**, [1910] S. C. (J.) 62; 47 [Sc. L. R. 468; 6 Adam, 238—Ct. of Justy.

15. *Street Betting—Seizure by Police of Proceeds of Bets—Action to Recover Money—Illegality—Ex turpi causa non oritur actio—Betting Act*, 1853 (16 & 17 Vict. c. 119), s. 11.—The plaintiff, a bookmaker, placed 107l. 6s. 8d., the proceeds of street betting, in a house occupied by a person who assisted him in his betting transactions. The house in question having been searched by the police under a warrant issued under sect. 11 of the *Betting Act*

**111. Betting Houses and Betting—Continued.**

1853, the 107l. 6s. 8d. and a number of betting slips were seized and retained by the police for the purposes of certain proceedings taken against the plaintiff and others. In those proceedings the plaintiff was acquitted, and he now sued the defendant for detaining the £107 6s. 8d.

**HELD**—that the plaintiff was entitled to recover.

*Per* Moulton and Buckley, L.JJ. The maxim *extorpi causa non oritur actio* had no application to such a case, as the plaintiff was not asking the Court to enforce any illegal contract or to grant relief dependent in any way on any illegal transaction on his part, but was basing his claim solely on the unjustifiable detention by the defendant of the money, the property in which had passed to the plaintiff with the possession.

Decision of Warrington, J. (102 L. T. 253; 74 J. P. 189; 26 T. L. R. 274; 54 Sol. Jo. 288) reversed.

**GORDON v. CHIEF COMMISSIONER OF METROPOLITAN POLICE**, [1910] 2 K. B. 1080; 79 L. J. K. B. 957; 103 L. T. 338; 74 J. P. 437; 26 T. L. R. 645; 54 Sol. Jo. 719—C. A.

**16. Street Betting—Betting in a "Street or Public Place"—Alternative Charge—General Conviction—Street Betting Act, 1906** (6 Edw. 7, c. 43), s. 1 (1).—A person was charged with a contravention of the Street Betting Act, 1906, s. 1 (1), by loitering for the purpose of betting "in a passage or unenclosed piece of ground, . . . being a street or public place" within the meaning of the Act.

**HELD**—on an appeal, that the charge was alternative, and consequently that a general conviction following thereon fell to be quashed.

**LANG v. WALKER**, [1910] S. C. (J.) 41; 47 [Sc. L. R. 162; 6 Adam, 180—Ct. of Justy.

**17. Betting—Betting Circular Sent to Infant Undergraduate—Address not Indicating Connection with University—Mens rea—Betting and Loans (Infants) Acts, 1892** (55 Vict. c. 4), ss. 1, 3.—Under sect. 3 of the Betting and Loans (Infants) Act, 1892, the sender of a betting circular to an infant undergraduate is not deemed to have knowledge, though in fact ignorant, that the addressee is an infant where the address to which the circular is sent does not show that the addressee is at a university.

Where, therefore, a betting circular was sent to an infant undergraduate who resided at licensed lodgings in a university town, but there was nothing in the mere address to indicate that it was a lodging licensed by the university authorities, or that the addressee was at the university:—

**HELD**—(Lord Alverstone, C.J., dissenting) that the sender could not, under sect. 3 of the Betting and Loans (Infants) Act, 1892, be deemed to have had knowledge that the addressee was an infant.

**MILTON v. STUDD**, [1910] 2 K. B. 118; 79 L. J. [K. B. 638; 102 L. T. 573; 74 J. P. 217; 26 T. L. R. 392—Div. Ct.]

**18. Using House for Purpose of Receiving Bets on Horse-races—Evidence of User—Betting Act, 1853** (16 & 17 Vict. c. 119), ss. 1, 3.—The appellant was a bookmaker, and a letter was sent to his premises stating that the writer wished to open a deposit account with the appellant, and on hearing from him would forward £5; the writer added that none of his commissions would exceed the amount without a further remittance. The appellant replied, enclosing a book of rules, and saying that "on receipt of yours, as suggested, I will place you on my list of clients." The money was thereafter sent to the appellant in the form of postal orders. Bets were made by the appellant on behalf of the writer of the letter, and a day or two later the appellant's premises were raided, when books of account, showing betting transactions and about 100 betting slips, were found. The appellant was convicted upon an indictment under the Betting Act, 1853, for using the premises for the purpose of moneys being received by him as and for the consideration for certain assurances, undertakings, promises, and agreements to pay thereafter certain moneys upon certain events and contingencies of and relating to horse-races.

**HELD**—that there was evidence upon which the jury could convict the appellant.

*Scumble*, the receipt of a document which can be turned into money is the receipt of money within sect. 1 of the Betting Act, 1853.

**R. v. MORTIMER**, [1911], 1 K. B. 70; [1910] [W. N. 210; 80 L. J. K. B. 76; 27 T. L. R. 17—C. C. A.]

**19. Betting House—Keeping a Common Gaming House—Office used in England for the Purpose of Enabling Betting Business to be carried on in Holland—Special Verdict—Betting Act, 1853** (16 & 17 Vict. c. 119), ss. 1, 2.—Where an office in England is used substantially for the purpose of assisting in the management of a betting business carried on abroad, an offence is committed against the Betting Act, 1853. It is immaterial that the office in this country is not advertised or in any way made known to the public.

**R. v. ANDREWS, SCHOTZ AND LUGGAR**, 74 J. P. [255—Cent. Crim. Ct.]

**20. Betting on Horse-races—Gaming—Licensing Act, 1872** (35 & 36 Vict. c. 94), s. 17 (1).—Betting upon horse-races does not come within the meaning of the term "gaming" in sect. 17 sub-sect. 1, of the Licensing Act, 1872.

**KEEP v. STEVENS**, 100 L. T. 491; 73 J. P. 112; [22 Cox, C. C. 59—Div. Ct.]

**21. Betting—Publishing Advertisement Inviting Public to Bet with Another Person Resident Abroad—Betting Act, 1853** (16 & 17 Vict. c. 119), ss. 1, 3, 7—*Betting Act, 1874* (37 Vict. c. 15), s. 3.—A. was charged with a contravention of the Betting Acts, 1853 and 1874, by publishing advertisements, in a street, inviting the public to bet on football matches with B., who was resident in Holland, and to whom any money staked by members of the public was to be sent by them by post.



III. Betting Houses and Betting—Continued.

HELD—that under the statutes the publishing of advertisements inviting the public to bet, although done by persons other than the one with whom the bet was to be made, and to whom the money staked in respect thereof was to be paid, was an offence under the Acts, and, consequently, that the complaint set forth a relevant charge against A.

AGNEW v. MORLEY, [1909] S. C. (J.) 41; 46 [Sc. L. R. 640; 6 Adam, 9—Ct. of Justy.

IV. LOTTERIES.

22. *Limerick Competition—Advertisement of Competitions—Claim for Price of Advertisements—Gaming Act, 1802 (42 Geo. 3, c. 119), s. 5—Lotteries Act, 1836 (6 & 7 Will. 4, c. 66), s. 1.*—The defendants employed the plaintiffs in connection with advertising the conditions of certain “Limerick” competitions, and also the terms of a letter-writing competition in which the public were invited to complete a letter containing blank spaces by adding the missing words. In addition to prizes offered for the best lines, every competitor sending in a line by a certain date was to receive a prize worth a guinea. Consolation prizes were also to be awarded. It was stated in the conditions that every line would be judged entirely on its merits. The plaintiffs, having arranged and paid for the insertion of these advertisements, sued the defendants to recover the money they had so paid, and their commission.

HELD—that the competitions advertised were lotteries; that in advertising them the plaintiffs committed an illegal act; and, therefore, that the plaintiffs were not entitled to recover.

*Blyth v. Hulton & Co.* (1908) 24 T. L. R. 719 applied.

Decision of Walton J. (26 T. L. R. 64) affirmed.

SMITH'S ADVERTISING AGENCY v. LEEDS [LABORATORY CO., 26 T. L. R. 335; 54 Sol. Jo. 341—C. A.

GARNISHEE ORDERS.

See BANKERS, No. 5; BANKRUPTCY, No. 29; COMPANIES, No. 14; COUNTY COURT; EXECUTION; PRACTICE. Nos. 17, 18.

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GAS COMPANIES AND SUPPLY OF GAS.

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(a) In General.

1. “Gas Works and Plant”—Purchase by Municipal Corporation—Goodwill—New Zealand

—*Hamilton Gas Works Act, 1895.*—In sect. 46 of the Hamilton Gas Works Act, 1895, the expression “gas works and plant” includes not only the works themselves in the material sense, but the undertaking as a going concern.

Decision of the C. A. of New Zealand (27 New Zealand L. R. 1020) reversed.

HAMILTON GAS CO. v. HAMILTON CORPORATION, [1910] A. C. 300; 79 L. J. P. C. 76; 102 L. T. 372; 74 J. P. 185; 26 T. L. R. 377 —P. C.

(b) Mains, Pipes, Lamps.

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II. DONATIO MORTIS CAUSA.

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[No paragraphs in this vol. of the Digest.]
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See also EXECUTORS, No. 1.

I. IN GENERAL.

1. *Fiduciary Relation—Principal and Agent—Mother and Son—Voluntary Assignment—Independent Advice—Validity of Gift.*—By his will, A. B. C. left all his property, which mainly consisted of leasehold premises and the business of a beer-shop carried on there, to his widow, S. C., and appointed her sole executrix. Shortly after A. B. C.'s death, S. C. purported to assign the lease of the said premises and the business to a son, H., who had assisted his father in the management of the business prior to his death, and had since managed the business on behalf of his mother. No consideration appeared on the face of the assignment except the usual covenant to perform the covenants of the lease. But it appeared that H. agreed to pay and had paid to his mother, S. C., £3 a week out of the profits after the transfer of the business, and it was alleged that the assignment was executed in fulfilment of A. B. C.'s express wish. S. C. died, leaving two sons, H. and A., and a daughter. By her will she appointed her two sons executors and trustees, and, after certain legacies to A., to her daughter, and a brother-in-law, she directed her trustees to stand possessed of the residue of her property on trust for her three children in equal shares. A. now brought an action against his brother, H., for a declaration that the above assignment of the lease and business to H. was invalid on the ground that H. had failed to see that his mother had independent advice, and that the gift was induced by the

**I. In General—Continued.**

confidential relation of principal and agent existing between H. and his mother.

**HELD**—that the gift was made owing to the affection of the mother for her son H., and to give effect to the wishes of her husband; consequently that the plaintiff's claim failed and that the gift was good.

**IN RE COOMBER, COOMBER v. COOMBER**, [1910]  
[W. N. 278; 130 L. T. Jo. 105; 45 L. J. N. C.  
807—Neville, J.]

**II. DONATIO MORTIS CAUSA.**

See also **DEATH DUTIES**, No. 8.

**(a) Subject matter.**

[No paragraphs in this vol. of the Digest.]

**(b) Validity.**

[No paragraphs in this vol. of the Digest.]

**(c) Generally.**

**2. Subsequent Will—Revocation—Legacy of Same Amount—Satisfaction.**—A valid *donatio mortis causa* is not revoked by the subsequent execution of a will, nor is there any presumption that it is satisfied by the bequest of the same amount by a will executed after the *donatio*.

*Jones v. Selby* ((1710) Prec. Chan. 300) distinguished.

**HUDSON v. SPENCER**, [1910] 2 Ch. 285; 79  
[L. J. Ch. 506; 103 L. T. 276; 54 Sol. Jo. 601—  
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**GROUND GAME.**

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**GROUND RENTS.**

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**INSURANCE**, Nos. 5, 7; **STOCK EXCHANGE**.

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[No paragraphs in this vol. of the Digest.]

**II. DISCHARGE OF SURETY.**

**1. Joint and Several Guarantee—Bank Overdraft—Death of One Guarantor—Account Closed—Demand for Payment—Right of Executors to have Liability discharged by Principal Debtor.**]

—A. and other directors of the defendant company executed a joint and several continuing guarantee of the company's overdraft at its bankers. A. died, and subsequently the bankers wrote a letter to his executors stating that the balance due to the bank on the date when the bank received notice of A.'s death was £17,219, that the account had then been stopped and a new account opened, and that their claim against A.'s estate was therefore £17,219 with interest from the date on which the account was stopped. A.'s executors now brought this action against the company for a declaration that they and their testator's estate were entitled to be discharged of all liability under the guarantee by the payment by the company of the £17,219 with interest.

**HELD**—that the bank had a present right of action against the plaintiffs for the £17,219 with interest, which they had in fact claimed by their letter, that in such circumstances the jurisdiction of the Court to grant relief was not limited to cases where the creditor had a right to sue the debtor which he had refused to exercise, and that the plaintiffs were entitled to the declaration asked for.

**ASCHERSON v. TREDEGAR DRY DOCK AND WHARF CO., LD.**, [1909] 2 Ch. 401; 78 L. J. Ch. 697; 101 L. T. 519; 16 Manson, 318—Eady, J.]

**2. Mortgage to Secure Overdraft—Special Provisions—Arrangement with Creditors by Principal Debtor—Scheme—New Company—Variation—Release of Principal Debtor.**—A surety is not discharged by the release of the principal debtor if he has expressly bound himself by the instrument creating the suretyship to continue liable.

P. mortgaged certain properties to a bank to secure overdrafts of a firm from time to time. The mortgages provided that the bank should be at liberty, without thereby affecting their rights therein, at any time to vary, exchange, or release any other securities held or to be held by the bank for or on account of the moneys thereby secured or any part thereof, and to compound with, give time for payment of and accept compositions from and make any other arrangements with the firm. Subsequently the bank agreed to a

**II. Discharge of Surety—Continued.**

scheme whereby a new company took over all the assets and liabilities of the firm, and issued debenture stock to the bank and other creditors to the amount of the debts due to them from the firm, plus 25 per cent., in full discharge of all claims. The bank calculated the total amount of their debt to be £3,530, and deducted £1,630, being the value of securities held on the firm's property, but did not take into account the mortgage on P.'s property. For the £1,900 the bank received debentures to the amount of £2,375.

**HELD**—that the debentures were accepted in accord and satisfaction of the £1,900, but that under the proviso in the mortgages P., as surety, was not discharged in respect of so much of the £1,630 as should not be realised by the securities held by the bank on the firm's property.

*Cowper v. Smith* (1838) 4 M. & W. 519). *Union Bank of Manchester v. Beech* ((1865) 3 H. & C. 672), and *Commercial Bank of Tasmania v. Jones* ([1893] A. C. 313) considered.

Decision of *Neville, J.* ([1909] W. N. 261) varied.

**PERRY v. NATIONAL PROVINCIAL BANK OF [ENGLAND]**, [1909] 1 Ch. 464; 79 L. J. Ch. 509; 102 L. T. 300; 54 Sol. Jo. 233—C. A.

**3. Composition by Principal Debtor with his Creditors—Secret Bargain as to Payment in Full by Principal Debtor to Creditor to whom Surety Bound—Assent to Composition by that Creditor.**—The plaintiff having advanced a sum of money to one M., he obtained from him (*inter alia*) a promissory note in which the defendant joined as surety. Subsequently a resolution was passed at a meeting of M.'s creditors that they would accept a composition. The plaintiff assented to the resolution, but M. agreed with the plaintiff in writing, without the knowledge or consent of the defendant, to discharge in full his indebtedness to the plaintiff. M. failed to pay the composition and also the debt owing to the plaintiff. Thereupon the plaintiff sued the defendant on the promissory note.

**HELD**—that by the bargain which the plaintiff had made with M. he had lost both his original debt and his composition; and that therefore the defendant was released from his suretyship.

*Mulliken v. Hodgson* ((1851) 16 Q. B. 689) and *Ex parte Phillips, In re Harvey* ((1888) 36 W. R. 567) considered and applied.

Decision of Lord Coleridge, J., affirmed.  
**MAYHEW v. BOYES**, 103 L. T. 1—C. A.

**4. Fidelity Bond—Condition—Renewal of Appointment—Resignation and Reappointment—“Office of Renewable Character.”**—On the appointment, in 1901, of B. by the plaintiff society as their store-clerk, B. and the defendants entered into a bond with the plaintiff society for his fidelity “during such time as he continues to hold the same, in virtue of his present appointment or of any renewal thereof, if such office is of a renewable character.” Pursuant to a resolution passed by the plaintiff society, that any employee seeking an increase of salary

should give one month's notice of resignation, B., who sought an increase of salary, gave a month's notice of resignation and was re-appointed, his salary being increased.

**HELD**—that the employment was not renewable in its character within the meaning of the bond, and that the sureties were not liable for defalcations after the re-appointment.

**TOAMES CO-OPERATIVE AGRICULTURAL AND [DAIRY SOCIETY, LD. v. FOLEY]**, [1910] 2 I. R. 277—C. A., Ireland.

**GUARDIAN AND WARD.**

*See* INFANTS.

**GUARDIANS OF POOR.**

*See* POOR LAW.

**GUN LICENCES.**

*See* GAME; REVENUE.

**HABEAS CORPUS.**

*See* CROWN PRACTICE.

**HABITUAL CRIMINAL.**

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**HACKNEY CARRIAGES.**

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**HALL MARK.**

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*See* SHIPPING AND NAVIGATION, XV.;  
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**HAWKERS AND PEDLARS.**

*See* MARKETS AND FAIRS.

# HEARSAY EVIDENCE.

See EVIDENCE.

# HEIRLOOMS.

See REAL PROPERTY AND CHATTELS  
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See COPYHOLDS AND MANORS.

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# HIGHWAYS, STREETS, AND BRIDGES.

COL.

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XII.; NUISANCE, Nos. 1, 2, 3;  
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3; STREET TRAFFIC.

## I. ORIGIN OF HIGHWAYS.

### (a) Adoption.

[No paragraphs in this vol. of the Digest.]

### (b) Dedication.

1. *Culs-de-sac*—*Dedication to Public*—*Primâ Facie Evidence*—*Evidence Insufficient to Negative Inference of Dedication*.]—Where courts which are *culs-de-sac* are proved *primâ facie* to have been dedicated by the owners to the public as highways, the mere fact that the owners have executed certain improvements and repairs on the property, or that it would have caused great inconvenience to the tenants of houses in the



**I. Origin of Highways—Continued.**

courts to exclude the public from them, is not sufficient to negative the inference of dedication.

There is no presumption of law against a *cul-de-sac* in a town being a highway, sufficient user by the public being proved.

ATTORNEY-GENERAL *v.* CHANDOS LAND AND [BUILDING SOCIETY, 74 J. P. 401—Warrington, J.

**(c) Prescription.**

See SCOTTISH LAW, No. 1.

**II. RIGHT OF PASSAGE.**

**2. Road, Foreshore, and Mill Tail—Tidal Navigable River—Whether Mill Tail Main River.**—In an action for trespass the defendant alleged a right as owner to pass over a metalled road and the foreshore and mill tail adjoining, the plaintiff being in possession of the road and foreshore. The defendant alternatively alleged, *inter alia*, that the mill tail was a navigable and tidal river or part of it, and therefore a highway.

HELD—that it would be a strong inference to draw that the mill was built across the public highway formed by a tidal navigable river, and that the configuration of the mill head and mill tail above and below prevented the evidence in support of the view that they were not of artificial construction being accepted.

FROST *v.* RICHARDSON, 103 L. T. 22—Eve, J.

See S. C. on appeal (103 L. T. 416)—C. A.

**III. ROADSIDE STRIPS AND DITCHES.****(a) Adjoining Owners.**

[No paragraphs in this vol. of the Digest.]

**(b) Presumption of Dedication.**

**3. Tramway on Roadside Strip—Purchase by Railway Company—Abandonment of Tramway—Strip regarded as Superfluous Land—Right of Pre-emption in Adjoining Owner—Combined Dedication—Acts Asserting Ownership of Soil Coupled with Acquiescence in Public User.**—In 1818 a strip of land lying alongside a highway in a sparsely populated agricultural district was purchased by a tramway company under statutory powers, and was used by them for the purposes of a horse tramway. The tramway company fenced off the strip from the adjoining land from which it was taken, but left it open to the road. The tramway company was dissolved and its lands and undertaking were purchased by a railway company, who were given statutory powers either to use parts of the tramway and certain of the tramway lands, including the strip in question, for the purposes of its own undertaking or not, as they should think fit, and to sell any part thereof not so used with a right of pre-emption to adjoining owners. In 1865 the railway company discontinued the use of the tramway and removed its rails. They did not, however, nor did their successors in title, another railway company, make any use of the strip in question for the purposes of their own undertakings. In 1906 the railway company then in possession sold the strip to the adjoining owner.

The highway authority claimed that the strip had been dedicated to public uses.

HELD—that since 1865 the strip was capable of dedication and that the railway companies were in a position to dedicate it, and that they were not incapacitated from so doing by the right of pre-emption in the adjoining owner; that the acts of user proved were sufficient to show an intention to dedicate; that the conduct of the railway companies in asserting from time to time their ownership of the soil while they acquiesced in the user of the surface by the public, further established an intention to dedicate on their part, and that the surface of the strip had therefore been dedicated to highway uses.

HELD, FURTHER—that between 1818 and 1865 the land was capable of dedication, and that there was a body capable of dedicating it.

HELD, FURTHER—that assuming it was necessary to prove a combined dedication by the company and the adjoining owner, there was a period of five years during which there was an owner capable of joining with the company to make a dedication.

COATS *v.* HEREFORDSHIRE COUNTY COUNCIL, [1909] 2 Ch. 579; 78 L. J. Ch. 568; 100 L. T. 695; 73 J. P. 355; 53 Sol. Jo. 245, 543—Eve, J.

On appeal, at the hearing, appeal abandoned and order varied by consent in respect of a detail not affecting the above: [1909] 2 Ch. 579, at p. 601; 78 L. J. Ch. 781; 101 L. T. 644; 74 J. P. 89—C. A.

**IV. OWNERSHIP OF SOIL.**

**4. Presumption of Lost Grant—Turnpike Road—Land Acquired under Turnpike Trust Act—Vesting in Local Authority—Fee Farm Rent—Payment for Long Period—Liability of Local Authority—Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 68.**—About 1802 a piece of land was acquired by turnpike trustees from the plaintiffs and used to widen a lane, but no conveyance could now be found. From that date a fee farm rent was paid in respect of the land, first by the turnpike trustees and then by the defendants, in whom it became vested under the Public Health Act, 1848. In 1904 the defendants refused to make any further payment.

HELD—that the defendants were terre-tenants for they had a statutory determinable fee simple in such portion of the soil as was vested in them by the Public Health Act, and that interest made them liable for the rent, and also that, having regard to the length of time during which the rent had been paid, the Court would presume that the turnpike trustees acquired this land from the plaintiffs as land subject to a fee farm rent without further payment.

Decision of Div. Ct. affirmed.

FOLEY'S CHARITY TRUSTEES *v.* DUDLEY CORPORATION, [1910] 1 K. B. 317; 79 L. J. K. B. 140; 102 L. T. 1; 74 J. P. 41; 8 L. G. R. 320—C. A.

**5. Presumption—Road between Two Tenements—One Tenement Covered by Water.**—There is no authority for the presumption that, where a road

#### IV. Ownership of Soil—Continued.

has been laid out between two tenements, one of which is covered by water, the soil of the road belongs solely to the tenement which is dry land.

FROST v. RICHARDSON, 103 L. T. 22—Eve, J.

See S. C. on appeal (103 L. T. 416)—C. A.

#### V. DIVERSION.

6. *Unfenced Field Road—User by Public—Acts of Interruption by Owner—Evidence—Old County Maps—Sale Plan—Admissibility—Statutory Declaration by Estate Agent.*—A disputed right of way started from a public road, and, passing a devious course for about a mile across an estate, came out into another public road. It was in the nature of a rough field or occupation road and was unfenced, and had existed more or less in the same course since 1826, and had gates across it at certain places. It had never been repaired by any public authority. The public used it both before and after 1848. The plaintiff was the owner of part of the estate and the occupier of the whole of it. In 1848 a predecessor in title of the plaintiff purchased part of the estate, and the plan annexed to the particulars of sale showed the way where it passed through part of the property, and stated that it was a public road, and a copy of this plan was attached to a statutory declaration (identifying certain plots of land) made at the same time by the then agent of the estate. The plaintiff, in 1882, placed a bank across the way at a certain place and diverted it, and afterwards committed other acts of interruption.

HELD—on the evidence, that the way was a public road in 1848, and that the subsequent acts of interruption by the plaintiff could not countervail the public right.

HELD—also, that old county maps (showing the way) published, one 1797 by the King's Geographer, and the other in 1826 by A. Bryant (a well-known country surveyor), and produced from the British Museum by the proper official, were admissible as some evidence of reputation.

TRAFFORD v. ST. FAITH'S RURAL DISTRICT COUNCIL, 74 J. P. 297—Neville, J.

#### VI. MANAGEMENT AND CONTROL OF HIGHWAYS.

[No paragraphs in this vol. of the Digest.]

#### VII. REPAIR AND MAINTENANCE OF HIGHWAYS.

See also Nos. 12, 19, *infra*.

##### (a) Awarded Road.

[No paragraphs in this vol. of the Digest.]

##### (b) Drainage.

See also SEWERS, No. 1.

7. *Public Health—Sewer—Surface Water in Roads—Trespass on Plaintiff's Land—Water Running Along the Channel Formed by a Bourne Flow in a Chalk District—Whether*

*"Watercourse" within the Meaning of the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 17.*—The plaintiff was the owner of land in the neighbourhood of Croydon. The defendants permitted the surface drainage from certain roads in their district to flow across the plaintiff's land, and claimed the right to do so either on the ground (a) that there was a watercourse across the land, or (b) on the ground that there was a sewer which ran across the plaintiff's land into which they were entitled to discharge the water in question. It appeared that from time immemorial there had been "bourne flows" of underground water from the chalk, which bourne flows had on divers occasions flooded the land occupied by the plaintiff, and had followed the channel or watercourse which the defendants alleged was a watercourse or a sewer. The plaintiff claimed damages for trespass and an injunction.

HELD—upon the facts, that the bourne course was not a "watercourse" within the meaning of sect. 17 of the Public Health Act, 1875; that it was not a sewer; and that the plaintiff was, therefore, entitled to damages for trespass and an injunction.

PEARCE v. CROYDON RURAL DISTRICT COUNCIL, [74 J. P. 429; 8 L. G. R. 909—Walton, J.]

8. *"Drain"—Discharge on Adjoining Land—Absence of Channel at Outlet—Presumption of Legal Origin—Summary Jurisdiction (Ireland) Act (14 & 15 Vict. c. 92), s. 9.*—The defendant was the occupier of lands adjoining a highway, and separated therefrom by a bank three feet in width. In this bank there was a small hole or eye, which had been in existence for twenty-nine years, and by means of which surface water from the highway was discharged on to the defendant's lands. There was no evidence as to the origin of the hole, nor was there any defined channel on the defendant's lands into which the water discharged through it could flow, nor any evidence that there had ever been such a channel.

HELD—that the Court ought to presume a legal origin for the hole or eye, and that, when originally made, it had some proper outlet, and therefore that it was a "drain" which the defendant was bound to scour, within the meaning of sect. 9 of the Summary Jurisdiction (Ireland) Act, 1851.

Attorney-General v. Copeland ([1902] 1 K. B. 690) applied.

KING'S COUNTY COUNTY COUNCIL v. KENNEDY, [1910] 2 I. R. 544; 44 I. L. T. 146—Div. Ct. Ireland.

##### (c) Indictment for Non-repair.

9. *Bridge—Prima facie—Liability of County—Special Plea.*—The county being *prima facie* liable for the repair of a public bridge cannot, on an indictment for non-repair, without special plea, escape liability by casting the burden upon some other body.

R. v. COUNTY COUNCIL OF NORFOLK, 26 T. L. R. [269—Jelf, J.]

##### (d) Mandamus

[No paragraphs in this vol. of the Digest.]

# VII. Repair and Maintenance of Highways— *Continued.*

## (e) Material for Repair.

[No paragraphs in this vol. of the Digest.]

## (f) Miscellaneous.

**10. Carriage Plate Fixed for Convenience of Householder — Vesting in Local Authority — Nuisance — Obstruction — Action for Personal Injuries — Liability of Householder — Public Health Act, 1848 (11 & 12 Vict. c. 63), ss. 68, 69 — Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 149, 150.]**—A local authority, under the powers of the Public Health Act, 1848, required the defendant's predecessor in title, together with other frontagers, to do certain work on a street which has since become a highway, and on default being made did the work themselves and charged the expenses to the frontagers. The work included the laying of two sloping iron carriage plates over the gutter between the roadway and the footway to facilitate the passage of horses and carriages from the roadway to the stables of two of the houses, one of which now belonged to the defendant. The two carriage plates did not meet by a few inches, thus leaving a small hole into which the plaintiff stumbled. This hole was opposite the defendant's house. In an action by the plaintiff against the defendant for damages for personal injuries:

**HELD**—that the carriage plates formed part of the highway, which was vested in the local authority, and that the defendant was not liable.

Decision of Div. Ct. reversed.

**JONES v. REW**, 79 L. J. K. B. 1030; 103 L. T. [165; 74 J. P. 321; 8 L. G. R. 881—C. A.]

## (g) Misfeasance.

**11. Malfeasance or Non-feasance — Heap of Stones Tipped in Roadway — Several Stones on Footpath — Injury to Passenger Treading on Stone.]**—The plaintiff coming out from his house on to the pavement in front of his house put his foot on a piece of sandstone lying on the pavement and fell, spraining his ankle. Evidence was given that a heap of sandstone had been tipped by the defendants' servants in the roadway close to the kerb in front of the plaintiff's house, and subsequently several stones were seen on the pavement. There was no barrier between the kerb and the stones. The plaintiff brought an action against the defendants alleging that his injuries were caused by the malfeasance of the defendants; but he was non-suited.

**HELD**—that the non-suit was wrong, and that there was some evidence that the piece of sandstone was on the pavement by the action of the defendants' servants.

**GOULD v. BIRKENHEAD CORPORATION**, 74 J. P. [105; *sub nom.* **GOULDSON v. BIRKENHEAD CORPORATION**, 8 L. G. R. 395—Div. Ct.]

## (h) Mode of Repair.

[No paragraphs in this vol. of the Digest.]

## (i) Ratione Tenuræ.

[No paragraphs in this vol. of the Digest.]

# VIII. EXTRAORDINARY TRAFFIC.

## (a) Contributory Negligence of Authority.

[No paragraphs in this vol. of the Digest.]

## (b) Liability for Damage.

See No. 12, *infra*.

## (c) Limitation of Action.

[No paragraphs in this vol. of the Digest.]

## (d) Practice.

**12. Traction-engine — Excessive Weight — Injury to Highway — Nuisance — Special Damage — Right of Road Authority to Sue.]**—The use of a traction-engine which, by reason of its excessive weight, does substantial and abnormal damage to a public road, adequate for ordinary traffic, is a public nuisance, even though the engine be constructed in compliance with the provisions of the Locomotive Acts, 1861 and 1865.

In such a case the duty cast upon a county council to repair such damage, and the liability of a district council to provide the funds for such repair, amount to special damage, so as to make the owner of the traction-engine civilly liable at the suit of both bodies, suing jointly, for the cost of repairing the road.

*Semble*, such an action could be maintained by either body suing alone.

**CAVAN COUNTY COUNCIL AND BAILIEBOROUGH [RURAL DISTRICT COUNCIL v. KANE]**, [1910] 2 I. R. 644—Div. Ct., Ireland.

# IX. OBSTRUCTION OF HIGHWAYS.

See also STREET TRAFFIC, Nos. 9, 12.

**13. Nuisance — Loading and Unloading Goods — Excessive User.]**—Whether the extent of the user of a public street in front of business premises for the purpose of loading and unloading goods is excessive is a question of fact, and in answering that question all the circumstances of the case have to be taken into consideration.

**ATTORNEY-GENERAL v. W. H. SMITH AND SON**, [74 J. P. 313; 26 T. L. R. 482; 8 L. G. R. 679—Neville, J.]

**14. Meeting Held on Highway — "Lawful Public Meeting" — Public Meeting Act, 1908 (8 Edw. 7, c. 66), s. 1.]**—The mere fact that a public meeting is held on a highway does not make it unlawful. Such a meeting may therefore be a "public lawful meeting" within the purview of the Public Meeting Act, 1908.

**BURDEN v. RIGLER**, [1910] W. N. 279; 27 [T. L. R. 140—Div. Ct.]

**15. Public Footpath — Obstruction — Mandatory Injunction.]**—An urban district council claimed a mandatory injunction against a quarry company to restore a highway to its former condition and to remove a fence which they had placed across it. The council also claimed an injunction restraining the company from interfering with the highway.

**HELD**—that the council were not entitled to the mandatory injunction, but that they were



**IX. Obstruction of Highways—Continued.**

entitled to the injunction restraining the company from interfering with the highway.

ATTORNEY-GENERAL *v.* GRAYS CHALK QUARRIES Co., LD., 74 J. P. N. C. 147—Neville, J.

**X. BRIDGES.****(a) Erection and Repair.**

See also No. 19, *infra*.

**16. Non-repair—Liability of County—Indictment—Evidence—Maps.**—The county being *prima facie* liable for the repair of a public bridge cannot, on an indictment for non-repair, without special plea, escape liability by casting the burden upon some other body.

On an indictment for the non-repair of a bridge the Court admitted in evidence an ancient map purporting to have been made by one C., a person of repute in connection with maps and surveys, proof being given of the custody from which it came.

*Semble*, the map would have been admissible even without proof of the custody from which it came.

The Court also admitted two maps purporting to have been made by the King's Geographer, without proof of the custody from which they came, but refused to admit a copy of an old minute book which came from the custody of the bridge reeves of another bridge in the same neighbourhood as the bridge in question.

R. *v.* COUNTY COUNCIL OF NORFOLK, 26 T. L. R. [269—Jelf, J.]

**17. Reconstruction—Obligation to Raise Bridge over Canal so as not to Constitute a Nuisance.**

**HELD**—that the defendants being bound to repair and reconstruct a bridge passing over a canal were liable in doing so to raise it so as to prevent it from being a nuisance and an obstruction to navigation.

NORTH STAFFORDSHIRE RY. Co. *v.* MAYOR, [ETC., OF HANLEY, 73 J. P. 477; 26 T. L. R. 20; 8 L. G. R. 375—C. A.]

**(b) Tolls.**

**18. Statutory Tolls—Lease—Rates not to be Increased—Conway Bridge Act, 1878 (41 Vict. c. lxviii.), s. 16, Sched.**—In 1907 the Commissioners constituted by the Conway Bridge Act, 1878, demised to the defendant at an annual rent the tolls which were or could be demanded or taken on the bridge, subject to all statutory restrictions and exemptions, and so that the tolls should not be increased beyond those then levied and taken. By the schedule to the Act a toll of sixpence is payable for every horse drawing a carriage, but at the date of the lease one toll only was taken for a hackney carriage passing over the bridge with passengers and returning with the same passengers or without passengers on the same day, and no toll was demanded for a hackney carriage passing without passengers. At the date of the lease and for many years previously there was a notice board at the bridge on which was a copy of the schedule to the Act. The defendant having intimated that he would,

after March 1st, 1909, charge a toll in the case of a carriage plying for hire every time it crossed the bridge, the Commissioners sought to restrain him from doing so, alleging that this would be in breach of the terms of the lease. The defendant counterclaimed for rectification of the lease so as to enable him to levy and take such tolls.

**HELD**—that the Commissioners were entitled to an injunction, and that the defendant was not entitled to rectification.

Decision of Eve, J. (26 T. L. R. 81) reversed.  
CONWAY BRIDGE COMMISSIONERS *v.* JONES, [102 L. T. 92; 26 T. L. R. 259—C. A.]

**XI. STATUTORY INTERFERENCE WITH HIGHWAYS.****(a) Railway Companies.**

See No. 19, *infra*.

**(b) Tramways.**

**19. Bridge over Railway—Widening by Tramway Company—Liability to Repair Roadway—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 46—Tramways Act, 1870 (33 & 34 Vict. c. 78).**—Under the powers contained in the South Western Railway Act, 1859, the respondents constructed a railway through the parish of Teddington, certain highways being carried over the railway by a bridge constructed by the respondents. Thereupon the roadways over the bridge and the approaches became repairable by the respondents under sect. 46 of the Railways Clauses Consolidation Act, 1845. In 1877 the appellants' predecessors, in whose district the bridge and the approaches were situate, agreed to keep in repair the roads over the bridge and the approaches in return for a payment of £10 a year by the respondents. The appellants' predecessors and the appellants did so keep them in repair down to 1903. In 1909 a tramway company promoted a bill for power to construct a tramway over the bridge and approaches. The respondents then made an agreement with the tramway company that the latter should take over the respondents' liability to keep the road over the bridge in repair, and should widen the bridge and keep in repair the road so widened. The appellants also made an agreement with the tramway company that the tramway company should not construct the tramway over the bridge or the approaches until the widening of the bridge had been carried out in such manner as the respondents might approve. The tramway company's bill was afterwards passed, and under it they took powers to widen certain roads, including the widening of the bridge and its approaches. The bridge was then widened by the tramway company to the satisfaction of the respondents, the new bridge leaving room for four railway tracks to pass below it, instead of two tracks as previously. The tramway was duly constructed and was opened on April 1st, 1903, and the roadway forming part of the highway before the widening took place thereupon became repairable by the tramway company under the Tramways Act, 1870. On December 1st, 1903, the appellants declined to continue to repair the road under



# XI. Statutory Interference with Highways— *Continued.*

the agreement of 1877 in consequence of the substitution of a new bridge and the increase in the surface of the roadway, and gave notice to the respondents to repair it. The respondents did not do so, and the appellants summoned the respondents under the Railways Clauses Consolidation Act, 1845, for neglecting to repair the road over the bridge and the approaches. The respondents had annually tendered to the appellants £10 under the agreement of 1877.

**HELD**—that the respondents' obligation, so far as it had reference to the old roadway, was not done away with; that the agreement of 1877 still stood; and that the extra burden occasioned by the widening of the bridge did not fall upon the railway company.

TEDDINGTON URBAN DISTRICT COUNCIL *v.*  
[LONDON AND SOUTH WESTERN RY. CO., 102  
L. T. 328; 74 J. P. 121; 8 L. G. R. 253—  
Div. Ct.]

(c) **Water and Canal Companies.**

*See* WATERWORKS, No. 3.

## XII. PRIVATE STREET WORKS.

(a) **Charge on Premises.**

[No paragraphs in this vol. of the Digest.]

(b) **Exemptions from Liability as Owner.**

[No paragraphs in this vol. of the Digest.]

(c) **Local Act.**

[No paragraphs in this vol. of the Digest.]

(d) **Miscellaneous.**

[No paragraphs in this vol. of the Digest.]

(e) **New Streets.**

[No paragraphs in this vol. of the Digest.]

(f) **Notices.**

[No paragraphs in this vol. of the Digest.]

(g) **Objections.**

[No paragraphs in this vol. of the Digest.]

(h) **Owners.**

[No paragraphs in this vol. of the Digest.]

(i) **Property in Street.**

[No paragraphs in this vol. of the Digest.]

(k) **"Street."**

[No paragraphs in this vol. of the Digest.]

## XIII. MISCELLANEOUS.

20. *Locomotive—Threshing Machine—Licence—Exemption—"Agricultural Purpose"—Hauling Threshed Wheat—Locomotives Act, 1898 (61 & 62 Vict. c. 29), ss. 9, 10, 17.*—An engine registered as an agricultural locomotive for threshing is not being used for an "agricultural purpose" within the meaning of the Locomotives Act, 1898, when it is hauling wheat which it has been hired to thresh along a highway after it has been threshed.

HODDELL *v.* PARKER, [1910] 2 K. B. 323;  
[79 L. J. K. B. 759; 103 L. T. 42; 74 J. P.  
315 8 L. G. R. 690—Div. Ct.]

## HIRE OF GOODS.

*See* BAILMENT.

## HIRE-PURCHASE.

*See* BAILMENT; BANKRUPTCY; BILLS  
OF SALE.

## HOLIDAYS.

*See* TIME.

## HOMICIDE.

*See* CRIMINAL LAW.

## HONG KONG.

*See* DEPENDENCIES AND COLONIES.

## HORSE RACING.

*See* GAMING AND WAGERING.

## HORSE SLAUGHTERERS.

*See* ANIMALS.

## HOSPITALS.

*See* CHARITIES; PUBLIC HEALTH.

## HOTELS.

*See* INNS AND INNKEEPERS.

## HOUSE AGENT.

*See* AGENCY; REVENUE; SALE OF LAND  
VALUERS AND APPRAISERS.

## HOUSEBREAKING IMPLE- MENTS, POSSESSION OF.

*See* CRIMINAL LAW AND PROCEDURE.

## HOUSE OF LORDS.

See COURTS; PARLIAMENT.

## HOUSING OF THE WORKING CLASSES.

See COMPULSORY PURCHASE; METROPOLIS; PUBLIC HEALTH.

## HUSBAND AND WIFE.

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See also BANKRUPTCY; CONTRACT; INSURANCE; POOR LAW, No. 5; POWERS; PRACTICE; SALE OF GOODS; SETTLEMENTS, VII.	

### I. PROMISE TO MARRY.

[No paragraphs in this vol. of the Digest.]

### II. MARRIAGE.

#### (1) Presumption.

[No paragraphs in this vol. of the Digest.]

#### (2) Proof.

1. *Civil Marriage in Jersey—Evidence.*—In an English Court Jersey is treated as a foreign country with regard to civil marriages con-

## II. Marriage—Continued.

tracted there, and the evidence of some person acquainted with the law of Jersey is necessary to prove the validity of such marriages.

WESTLAKE v. WESTLAKE, OTHERWISE WIL-  
[LIAMS, [1910] P. 167; 79 L. J. P. 36; 102  
L. T. 396; 26 T. L. R. 223; 54 Sol. Jo. 215  
—Deane, J.

2. *Marriage in Scotland—Proof of Marriage in Suit for Restitution of Conjugal Rights—Subsequent Suit for Divorce—Necessity for Proof of Marriage in that Suit.*—The petitioner obtained a decree of restitution of conjugal rights. In that suit she gave formal proof of her marriage to the respondent in Scotland.

HELD—that in a suit for divorce following on the suit for restitution of conjugal rights, it was unnecessary for the petitioner to prove again the marriage in Scotland.

FREER v. FREER, 27 T. L. R. 13; 54 Sol. Jo. [874—Deane, J.

### 3. Validity.

See No. 29, *infra*.

#### (4) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

## III. PERSONAL RIGHTS AND OBLIGATIONS ARISING FROM MARRIAGE.

[No paragraphs in this vol. of the Digest.]

## IV. EFFECT OF MARRIAGE WITH REGARD TO PROPERTY.

See also POWERS (b).

### (1) Conveyance by Wife.

[No paragraphs in this vol. of the Digest.]

### (2) Dower, etc.

[No paragraphs in this vol. of the Digest.]

### (3) Separate Estate.

See also No. 7; INSURANCE, No. 9.

3. *Dresses Purchased by Wife—Money Supplied by Husband—Paraphernalia.*—Wearing apparel purchased by a married woman for her own personal use with money supplied by her husband is *prima facie* her property, and, in the absence of evidence to rebut this presumption, cannot be claimed by the husband.

There can be no question of paraphernalia during a husband's life.

*Per* Farwell L.J.—Since the Married Women's Property Act, 1882, the old common law exception of paraphernalia from the husband's right to his wife's chattels personal has ceased to exist.

Observations on paraphernalia in *Tasker v. Tasker* ([1895] P. 1) disapproved.

MASSON-TEMLIER & Co. v. DE FRIES, [1909]  
[2 K. B. 831; 79 L. J. K. B. 24; 101 L. T. 476;  
25 T. L. R. 784; 53 Sol. Jo. 744—C. A.

4. *Chattels Real of Wife Married Prior to 1883—Purchase by Husband of Reversion in Fee—Merger.*—The mere purchase by a husband of

the reversion in fee of chattels real, the property of his wife whom he married before 1883, does not *per se* operate as a merger of the terms.

Decision of Barton, J. ([1908] 1 I. R. 393) affirmed.

HURLEY v. HURLEY, [1910] I. R. 86—C. A., [Ireland.

5. *Marriage after Married Women's Property Act, 1882—Death of Wife without Disposing of Separate Personal Estate—Devolution—Title of Husband—Costs of Administration—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1 (1), 23.*—The Married Women's Property Act, 1882, has not altered the devolution of the undisposed of separate personal estate of a married woman, and accordingly, on the death of a married woman, even if married after the Act, the husband is entitled *jure mariti* to the undisposed of chattels real to which the deceased was entitled for her separate use, and administration is unnecessary to perfect his title.

A woman married since the Married Women's Property Act, 1882, died in 1895 without having disposed of an undivided share in an annuity out of lands for a term of years, to which she was absolutely entitled in remainder, subject to a life estate therein. On the determination of the life estate in 1907 her husband entered into receipt of said undivided share in said annuity. The lands out of which the said annuity was payable having been sold under the Land Purchase Acts, the husband, without being required to do so, took out administration to his deceased wife, and paid the necessary Crown duties, in order to make title to his share of the redemption price of said rent.

HELD—that the costs of administration should not be allowed as against the purchase-money of the lands sold.

*In re Lambert's Estate, Stanton v. Lambert* ((1888) 39 Ch. D. 626) and *Sarman v. Wharton* ([1891] 1 Q. B. 491) followed.

IN RE EVANS'S ESTATE, [1910] 1 I. R. 95; 44 [I. L. T. 88—Wylie, J., Ireland.

## V. ANTE-NUPTIAL OBLIGATIONS OF WIFE.

[No paragraphs in this vol. of the Digest.]

## VI. CONTRACTS OF WIFE.

### (1) As Agent for Husband.

6. *Wife's Desertion—Liability of Husband for Wife's Debts—Ostensible Authority—Limited Authority.*—The defendant's wife, while living with him, on various occasions ordered goods from the plaintiffs, for which the defendant paid and which were delivered at the defendant's address. The defendant's wife left him and as soon as he discovered that she was living with another man, he advertised in the *Times* that he would not be responsible for her debts. In the meanwhile before the appearance of the advertisement the defendant's wife had ordered goods from the plaintiffs which she directed to be booked to the defendant at the same address as before, but to be sent to another address where

## VI. Contracts of Wife—Continued.

she then was. In an action for the price of these goods :—

**HELD** that the defendant was not liable; (*per* DARLING, J.) because the ostensible authority given to his wife to order goods from the plaintiffs ceased when she left him to live with another man, and his quiescence, being due to ignorance of her whereabouts, did not amount to acquiescence in a continuance of such authority; (*per* BUCKNILL, J.) because the authority given was limited to goods sent to the defendant's address.

SWAN & EDGAR, LD. *v.* MATHIESON, 130 L. T. [Jo. 202; *Times*, December 17th, 1910—Div.Ct

### (2) With Husband.

*See also* CONTRACT, No. 6.

**7. Security for Husband's Debt—Independent Advice—Undue Influence—Canada.**—In transactions between a husband and wife the burden of proving undue influence lies upon those who allege it.

*Nedby v. Nedby* ((1852) 5 De G. & Sm. 377) approved.

In transactions between a husband and wife the husband's solicitor owes a duty to the wife, where her interests are concerned, to advise her and place her position and the consequences of what she is doing fully and plainly before her. If she rejects his intervention he ought to insist upon the wife being separately advised.

BANK OF MONTREAL *v.* STUART, 27 T. L. R. [117—P. C.

### (3) Transactions generally.

**8. Promissory Notes by Husband and Wife—Nature of Transaction not Explained to Wife.**—Where a wife becomes surety for her husband in a transaction under which she is to get an indirect advantage, the nature of the transaction and what she is doing must be properly explained to her.

TALBOT *v.* VON BORIS, 27 T. L. R. 95—Phillimore, J.

## VII. TORTS OF WIFE DURING COVERTURE.

[No paragraphs in this vol. of the Digest.

## VIII. GIFTS BETWEEN HUSBAND AND WIFE.

*See also* BANKRUPTCY, No. 31.

**9. Purchase in Joint Names—Resulting Trust—Presumption of Advancement—Effect of Decree of Nullity—Joint Tenancy.**—A husband purchased a house in the joint names of himself and his wife, he telling her that he was buying it as an investment, and for their joint habitation, and so that she might succeed to it if she survived him and he might have it if he outlived her. Subsequently the wife obtained a decree of nullity of marriage, the decree declaring the marriage to "have been and to be" absolutely null and void, and the wife to "have been

and to be" free from the bond of marriage. In an action for a declaration that the wife was entitled as joint tenant to the house :—

**HELD**—that the marriage being voidable and not void, the decree of nullity had no effect on the presumption of advancement, that there was no resulting trust in favour of the husband, and that the plaintiff was entitled to the declaration asked for.

DUNBAR *v.* DUNBAR, [1909] 2 Ch. 639; 79 L. J. [Ch. 70; 101 L. T. 553; 26 T. L. R. 21; 54 Sol. Jo. 32—Warrington, J.

**10. Settlement—Covenant to Settle After-Acquired Property—Gift by Husband to Wife—Ultimate Trust for Next of Kin—Duty of Trustees to Enforce Covenant in Favour of Volunteers.**—A covenant by a wife to settle after-acquired property includes property given to her by her husband during coverture.

*In re Ellis's Settlement* ([1909] 1 Ch. 618) followed.

The trustees of the settlement are not bound to enforce such a covenant in favour of volunteers.

*In re D'Angibau, Andrews v. Andrews* ((1880) 15 Ch. D. 228) applied.

IN RE PLUMPTRE, UNDERHILL *v.* PLUMPTRE, [1910] 1 Ch. 609; 79 L. J. Ch. 340; 102 L. T. 315; 26 T. L. R. 321; 54 Sol. Jo. 326—Eve, J.  
*See S. C., SETTLEMENTS*, No. 10.

## IX. PROCEEDINGS.

### (1) Against Husband and Wife.

[No paragraphs in this vol. of the Digest.]

### (2) Between Husband and Wife.

[No paragraphs in this vol. of the Digest.]

### (3) Wife's Liability for Costs.

[No paragraphs in this vol. of the Digest.]

## X. SEPARATION DEEDS.

*See* No. 38, *infra*.

## XI. MATRIMONIAL CAUSES IN THE HIGH COURT.

*See also* No. 40, *infra*.

### (1) Alimony and Maintenance.

**11. Order for Maintenance—No Dum Sola et Casta Clause—Application to Vary or Discharge on Allegation of Misconduct by Wife—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12), s. 1.**—When an order for maintenance is made by the Court, it is then determined once and for all, subject to appeal, whether or not the *dum sola et casta* clause is to be inserted. If it is not inserted in the order, it cannot be inferred.

COLLINS *v.* COLLINS, 103 L. T. 80; 26 T. L. R. [600; 54 Sol. Jo. 682—Evans, Pres.

**12. Husband's Petition for Divorce—Wife's Petition for Judicial Separation—Separate Suits—Alimony pendente lite—Staying proceedings.**—A husband petitioned for divorce, and his wife, in a separate suit, claimed a judicial separation.



# XI. Matrimonial Causes in the High Court—*Continued.*

In the latter suit the wife applied for and obtained an order for alimony *pendente lite*. Certain payments under this order being in arrear, the wife applied that the husband's suit for divorce should be stayed until he had paid such arrears.

**HELD**, that the alimony was not granted in any particular suit, but was given to the wife for her support generally, and that the Court in the exercise of its discretion would stay the divorce suit until the arrears of alimony were paid.

P. v. P. AND T., 26 T. L. R. 607; 54 Sol. Jo. 683  
[—Evans, Pres.]

## (2) Costs.

See also BANKRUPTCY, No. 32.

**13. King's Proctor—Unsuccessful Intervention—Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 2.**—Under sect. 2 of the Matrimonial Causes Act, 1878, the costs of every intervention to show cause against a decree *nisi* in a divorce suit, whether such intervention is started by the King's Proctor or by any other person, are in the discretion of the Court. If the intervention, though reasonably started, has been proved to be without justification, the petitioner, in the absence of some qualifying circumstances, is entitled to recover costs from the intervener, whether the intervener be the King's Proctor or other person.

Decision of Bigham, Pres. (*Higgins v. Higgins* [1910] P. 1; 79 L. J. P. 10; 26 T. L. R. 36) reversed.

Decision of Deane, J. (*Carter v. Carter*, [1910] P. 4; 79 L. J. P. 12; 101 L. T. 812; 26 T. L. R. 84; 54 Sol. Jo. 102) affirmed.

**HIGGINS v. KING'S PROCTOR, KING'S PROCTOR**  
[v. CARTER, [1910] P. 151; *sub nom.* HIGGINS v. HIGGINS, CARTER v. CARTER (KING'S PROCTOR INTERVENING), 79 L. J. P. 37; 102 L. T. 259; 26 T. L. R. 303; 54 Sol. Jo. 405—C. A.]

**14. Adultery of Petitioner—Intervention of Person with whom Adultery Committed—Rescission of Decree—Costs of King's Proctor—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12), s. 3.**—Decree of divorce rescinded on the ground of the adultery of the petitioner; and the petitioner and the person with whom she was charged with having committed adultery, and who had obtained liberty to intervene in the proceedings under sect. 3 of the Matrimonial Causes Act, 1907, condemned in the costs of the King's Proctor.

**DAVISON v. DAVISON (KING'S PROCTOR SHOWING CAUSE, MONTGOMERIE INTERVENING)**, [1909] P. 308; 79 L. J. P. 9; 26 T. L. R. 28; 54 Sol. Jo. 13—Deane, J.

**15. King's Proctor—Unsuccessful Intervention.**—Where the Court was of opinion that an intervention by the King's Proctor was not justified, it condemned the intervener in costs.

The Court refused to reserve judgment until

the appeals, then pending, in *Higgins v. Higgins, Carter v. Carter* (*supra*), should have been heard and decided by the Court of Appeal.

**HOWE v. HOWE AND HOWE (KING'S PROCTOR [SHOWING CAUSE], [1910] W. N. 30; 54 Sol. Jo. 252—Bigham, Pres.**

**16. Costs Incurred by Wife—Costs Taxed against Husband and Unpaid—Legacy Payable to Husband—Injunction to Restrain Payment—R. S. C., Ord. 68, r. 1.**—By a separation order the husband was ordered to make certain weekly payments to the wife for her support, but he left the country and evaded his obligation under the order. The husband became entitled to a legacy under the will of a deceased relation and he gave a power of attorney to a solicitor to receive it for him. The wife having petitioned for a divorce and incurred a bill of costs which had been taxed against the husband, but had not been paid by him, applied for an injunction to restrain the trustees of the will under which the legacy was bequeathed to the husband from paying, and the husband from receiving, the legacy.

**HELD**—that an injunction should be granted.  
**BULLUS v. BULLUS**, 102 L. T. 399; 26 T. L. R. [330; 54 Sol. Jo. 343—Bigham, Pres.]

**17. Jury Discharged without Giving Verdict—Re-trial—Wife's Costs—Stay of Proceedings until Payment—Jurisdiction.**—In cross suits for divorce the wife's petition was dismissed; but the jury, being unable to agree on the issue raised on the husband's petition, were discharged without giving a verdict. The husband was ordered to pay the wife's taxed costs within seven days. The husband set down his petition again for trial.

**HELD**—that the Court had jurisdiction to stay further proceedings on the husband's petition until payment by him of the wife's taxed costs.

*Joseph v. Joseph* ((1897) 76 L. T. 236) approved.

**KEMP WELCH v. KEMP WELCH AND CRYMES**, [1910] P. 233; 79 L. J. P. 92; 102 L. T. 787; 26 T. L. R. 477—C. A.]

## (3) Cruelty.

See also No. 36, *infra*.

**18. Cumulative Effect of Respondent's Acts.**—**HELD**—that the cumulative effect of the respondent's infidelity, of the indignities to which he had subjected the petitioner, the threats in his correspondence, and the suggestion that she should go to another man and be unfaithful—all of which had tended to prejudice her health—constituted a case of cruelty entitling the petitioner to a decree of divorce.

**COCHRANE v. COCHRANE (ROYCE INTERVENING)**, [27 T. L. R. 107—Evans, Pres.]

## (4) Custody of Children.

**19. Divorce of Parents—Right of Access to Daughter of Guilty Mother—Custody—Contempt of Court—Infant Attaining Years of Discretion—Election of Child—Discretion of Court.**—By a decree of divorce obtained at the instance of the husband the custody of the child of the marriage,

# **XI. Matrimonial Causes in the High Court—** *Continued.*

a daughter, was given to the husband. On the child attaining the age of sixteen she desired to live with her mother and the Court was satisfied that that was really her wish. The child, who was not a ward of Court, having met and gone to live with her mother, the father applied to commit the mother for contempt of Court in having removed the child from his custody and also that she might be ordered to restore the child to his custody.

**HELD**—that in the circumstances, the proper course was to discharge the order for custody and leave the parties to their common law rights.

A matrimonial offence committed by a wife which justifies a divorce ought not to be regarded for all time and under all circumstances as sufficient to disentitle her to access to her daughter, or even to the custody of her daughter assuming her to be under sixteen years of age.

Decision of Deane, J., reversed.

**MOZLEY STARK v. MOZLEY STARK AND [HITCHINS, [1910] P. 190; 79 L. J. P. 98; 101 L. T. 770; 26 T. L. R. 194—C. A.**

**20. Declaration as to Unfitness of Guilty Wife—Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), s. 7.**—The Court, on granting, at the instance of a husband, a decree of divorce by reason of the misconduct of the wife, refused to make a declaration under sect. 7 of the Guardianship of Infants Act, 1886, that the wife was unfit to have the custody of the children, there being no aggravated circumstances.

**BAGNALL v. BAGNALL AND HOBBS, 26 T. L. R. [659; 54 Sol. Jo. 738—Evans, Pres.**

## **(5) Damages.**

**21. Husband's Petition for Divorce—Claim for Damages against Co-respondent—Death of Respondent before Trial—Right of Petitioner to Proceed against Co-respondent.**—In a petition by a husband for the dissolution of his marriage, damages were claimed against the co-respondent in respect of his alleged adultery with the respondent. After the petition and citations had been duly served upon the respondent and the co-respondent, the respondent died.

**HELD**—that although the claim for divorce had abated by the death of the respondent, the claim for damages against the co-respondent had not abated, and, therefore, that the petitioner was entitled to proceed in respect of that claim.  
**M. v. M. AND A., 26 T. L. R. 305; 54 Sol. Jo. 309 [—Bigham, Pres.**

## **(6) Desertion.**

*See also No. 39, infra.*

**22. Intermittent Visits during Statutory Period.**—Where a husband has wilfully separated from his wife without her consent, intermittent visits by him to her during the statutory period necessary for desertion, without the intention on his part of remaining, or of resuming

marital intercourse, do not constitute a return to cohabitation.

**THURSTON v. THURSTON, 26 T. L. R. 388— [Evans, Pres.**

**23. Separation Deed—Insincerity of Respondent—Petition for Divorce—Commencement of Desertion.**—Where the Court was satisfied that a respondent had *mala fide* persuaded his wife to agree to a temporary deed of separation for six months, and was now living abroad in adultery, a decree of divorce was granted to the wife, notwithstanding that the commencement of the desertion was calculated prior to the date on which the separation should have come to an end.

**HARRISON v. HARRISON, 54 Sol. Jo. 619— [Evans, Pres.**

## **(7) Discretion of Court.**

*See also Nos. 13, 19, supra.*

**24. Adultery of Petitioner—Petition by Husband—Condonation—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31.**—The Court will not exercise its discretion in favour of a petitioner who has himself committed adultery of a flagrant character, notwithstanding the fact that his wife may have condoned the offence.

**WAIN v. WAIN AND EVE (KING'S PROCTOR [SHOWING CAUSE], 101 L. T. 815; 26 T. L. R. 131; 54 Sol. Jo. 119—Deane, J.**

**25. Petitioner Guilty of Bigamy—Discretion of Court to Grant Decree of Divorce.**—Circumstances in which the Court exercised its discretion and granted decree of divorce to the petitioner (the wife), notwithstanding the fact that she had been guilty of bigamy.

**NORTHOVER v. NORTHOVER, 26 T. L. R. 224— [Deane, J.**

**26. Wife Petitioner—Adultery of Petitioner—Concealment of Material Facts—Decree Nisi Made Absolute—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31.**—In this case the Court in exercise of its discretion under sect. 31 of the Matrimonial Causes Act, 1857, in exceptional circumstances made absolute a decree *nisi* of divorce although the petitioner, the wife, had been guilty of adultery and had not disclosed that fact when the decree *nisi* was granted.

**PRETTY v. PRETTY (KING'S PROCTOR SHOWING [CAUSE], Times, December 21st, 1910—Deane, J.**

## **(8) Foreign Divorce.**

(No paragraphs in this vol. of the Digest.)

## **(9) Judicial Separation.**

(No paragraphs in this vol. of the Digest.)

## **(10) Jurisdiction.**

**27. Foreign Co-respondent out of Jurisdiction—Application to be Dismissed from Suit—Discretion.**—The jurisdiction of the Divorce Court over the co-respondent both as to damages and costs in a suit properly instituted here does not depend on domicile, allegiance, or residence. If a foreign co-respondent is served in England the

# XI. Matrimonial Causes in the High Court— Continued.

Court has for that reason jurisdiction over him. He can be served abroad, whatever his nationality; and if he is served abroad, the statute authorizing such service gives to the Court jurisdiction over him. In proper cases the Court may exercise discretionary power, and dismiss or dispense with a co-respondent domiciled out of England, for example, in Scotland, but he is not entitled to demand as of right to be dismissed from the suit.

RAYMENT *v.* RAYMENT AND STUART (OTHERWISE STEWART), CHAPMAN *v.* CHAPMAN AND BUIST, [1910] P. 271; 79 L. J. P. 115; 103 L. T. 430; 26 T. L. R. 634; 54 Sol. Jo. 721—Evans, Pres.

28. *Domicil—Proof of Marriage after Previous Suit for Restitution of Conjugal Rights.*—Where a Scotch marriage had been formally proved in restitution proceedings it was held unnecessary to give strict proof of it on the hearing of a subsequent petition for divorce; but, it was

HELD—that there must be strict proof of an English domicil on the hearing of the petition for divorce, although formal evidence of an English domicil had been given at the trial of the suit for restitution.

FREER *v.* FREER, 27 T. L. R. 13; 54 Sol. Jo. 874 [—Deane, J.

## (11) Nullity of Marriage.

See also No. 9, *supra*; No. 41, *infra*.

29. *Decree of Divorce of Foreign Court—Validity—Subsequent Marriage Abroad—Jurisdiction—Recognition of Decree by English Court.*—In 1890 the respondent married one P., a native of and domiciled in the State of Massachusetts, but in 1892 she obtained a divorce from him in the State of Dakota on the ground of his cruelty and adultery. P. was not resident in Dakota, was not personally served with the proceedings, and did not appear in the proceedings there. In 1899, P. being still alive, the petitioner, a British subject domiciled and resident in this country, and the respondent went through a ceremony of marriage in New York, both parties believing that the divorce granted in Dakota was binding. It appeared that neither the State of Massachusetts, where P. was domiciled, nor the State of New York, where the petitioner and the respondent went through the ceremony of marriage, recognised the validity of the divorce in South Dakota in the circumstances in which it was obtained by the respondent. On a petition for a declaration of the nullity of the petitioner's marriage with the respondent:—

HELD—that the petitioner was entitled to the relief asked for.

CASS *v.* CASS (OTHERWISE PFAFF), 102 L. T. [397; 26 T. L. R. 305; 54 Sol. Jo. 328—Bigham, Pres.

30. *Decree Nisi—Time for Applications for Allowance—Form of Order—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12), s. 1.*—The time for an application for an allowance on behalf of the

respondent in a nullity suit is not limited to the date of the decree *nisi*. But by consent the matter may be then dealt with and an order made for a weekly or monthly allowance which, coming under sect. 1, sub-sect. 2 of the Matrimonial Causes Act, 1907, will remain open to be increased or diminished if a subsequent change of circumstances should require an alteration of the allowance.

K. *v.* K. (OTHERWISE R.), [1910] P. 140; 79 [L. J. P. 33—Deane, J.

## (12) Practice.

See also Nos. 21, 28, *supra*.

### (a) Appeals and New Trials.

31. *New Trial after Decree Nisi—Application to Divisional Court—Absence of Respondent and Witnesses—Affidavit of Merits—Costs.*—An application for a rehearing of a matrimonial cause tried by a judge without a jury should be made to a Divisional Court.

Where in a divorce suit which had been put in the list earlier than was anticipated by the respondent's country solicitor, who in consequence had not instructed counsel or arranged for the attendance of the respondent, co-respondent, and witnesses, a decree *nisi* was granted in the absence of those parties and witnesses, the Court made an order for the rehearing of the suit on the terms (1) that an affidavit should be filed by the respondent and co-respondent swearing that they had not committed adultery; and (2) that the respondent's country solicitor should, as he had offered to do, pay the petitioner's costs of the trial which had been thrown away, and also the costs of the application for the new trial.

HOLDEN *v.* HOLDEN AND PEARSON, 102 L. T. [398; 26 T. L. R. 307; 54 Sol. Jo. 328—Div. Ct.

### (b) Arrangement of Lists.

See No. 34, *infra*.

### (c) Contents of Petition.

[No paragraphs in this vol. of the Digest.]

### (d) Delay.

[No paragraphs in this vol. of the Digest.]

### (e) Divorce Bill.

[No paragraphs in this vol. of the Digest.]

### (f) Evidence.

32. *Uncorroborated Confession of Adultery.*—The Court acted upon an uncorroborated confession of adultery, and pronounced a decree of divorce.

WEINBERG *v.* WEINBERG, 27 T. L. R. 9—Evans, [Pres.

### (g) Hearing.

33. *Order of Speeches—Petition for Divorce—Counter-charges by Respondent and Co-respondent—No Evidence offered by Co-respondent.*—Where counsel for a co-respondent has called no evidence, he is entitled to address the jury after the petitioner's counsel.

JEFFREE *v.* JEFFREE AND NUTTALL, 54 Sol. Jo. [655—Evans, Pres.

# **XI. Matrimonial Causes in the High Court—** *Continued.*

## (h) *Interlocutory Proceedings.*

[No paragraphs in this vol. of the Digest.]

## (i) *Intervention of Third Party.*

See also Nos. 13, 14, 15, *supra*.

**34. Decree Nisi not Pronounced—Papers sent to King's Proctor—King's Proctor Declining to Intervene—No Charge of Collusion—Practice.]**—In a divorce suit, the judge decided not to pronounce a decree nisi, and ordered the papers to be sent to the King's Proctor. The case was in the list as part heard. The King's Proctor could not prove collusion, but he had evidence in his possession of facts necessary to the due decision of the case. On motion by the King's Proctor for directions :—

**HELD**—that, as the Court could not compel the Attorney-General to issue his fiat, the case should be put in the reserve list.

**JACKSON v. JACKSON**, 79 L. J. P. 82; 103 L. T. [79; 26 T. L. R. 476—Deane, J.

## (j) *Notice, Service and Stay of Proceedings.*

See Nos. 12, 17, 27, *supra*.

## (k) *Miscellaneous.*

**35. Divorce—Particulars of Charges in Petition—Explanatory Affidavit.]**—An explanatory affidavit in lieu of particulars of charges in a petition for divorce should be made by the solicitor who has seen the witnesses.  
**C. v. C. AND M.**, 55 Sol. Jo. 141—Deane, J.

**36. Cruelty and Adultery—Condonation—Subsequent Cruelty—Revival not Specifically Pleaded.]**—In a wife's suit for dissolution of marriage, evidence was given of the respondent's cruelty and adultery from March, 1908, to July 1909, in which latter month the petitioner left the respondent on account of his cruelty. In August, 1909, the petitioner filed a petition for divorce, which, however, was not served, as the respondent fell ill and at his request she returned to nurse him. In 1910, as the respondent was again guilty of cruelty, she finally left him and filed her petition.

**HELD**—that the petitioner was entitled to a decree, although revival of the previous misconduct on the part of the respondent had not been specifically pleaded.

**BRADDOCK v. BRADDOCK**, 27 T. L. R. 94; 55 [Sol. Jo. 79—Evans, Pres.

## **(13) Divorce.**

See also XI. (2), XI. (7), *supra*.

**37. Wife's Petition—Desertion and Adultery—Non-consummation of Marriage.]**—The fact that the marriage has not been consummated is no bar to a divorce being granted on the grounds of desertion and adultery.

**LEE SHIRES v. LEE SHIRES**, 54 Sol. Jo. 874— [Evans, Pres.

# **XII. PROTECTION ORDER.**

[No paragraphs in this vol. of the Digest.]

# **XIII. RESTITUTION OF CONJUGAL RIGHTS.**

**38. Separation Deed—Covenant not to Sue for Restitution.]**—By a separation deed the wife covenanted to abstain from suing for restitution of conjugal rights before the year 1913, and the husband covenanted to pay money to the wife for her support. In August, 1909, the husband intimated to the wife that he did not intend to continue the payments under the deed, or to resume cohabitation with her in 1913 or at all.

**HELD**—that in those circumstances the wife was entitled to sue for restitution of conjugal rights.

**WALLER v. WALLER**, 26 T. L. R. 223—Deane, J.

**39. Wife's Petition—Justification by Husband—Alleged Desertion by Wife—Insufficient Answer.]**—It is not a sufficient answer by a husband to a suit for restitution of conjugal rights that his wife had left the home for a less period than two years, and had neglected her children, and that the respondent's health had suffered in consequence of her conduct.

**WEST v. WEST**, 55 Sol. Jo. 48—Deane, J.

# **XIV. VARIATION OF SETTLEMENTS.**

See also SETTLEMENTS, No. 7.

**40. Restraint on Anticipation—Divorce—Remarriage of Wife—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5.]**—By an antenuptial marriage settlement the income of the trust funds was payable to the wife during the joint lives of the wife and husband for her sole and separate use and without power of anticipation.

**HELD**—that under sect. 5 of the Matrimonial Causes Act, 1859, the Court had power, after a decree absolute had been obtained by the wife for the dissolution of her marriage, to vary such settlement in such a way as to override the restraint on anticipation, notwithstanding the re-marriage of the wife.

**CHURCHWARD v. CHURCHWARD**, [1910] P. 195; [79 L. J. P. 59; 102 L. T. 862; 26 T. L. R. 401—Evans, P.

**41. Application by Respondent in Nullity Suit.]**—The Court, on the application of the respondent (the wife) in a nullity suit, made an order extinguishing the petitioner's interest in the funds brought into the settlement by the respondent.

**SUART v. SUART (OTHERWISE HODGSON)**, [1910] P. 246; 79 L. J. P. 86; 54 Sol. Jo. 636; *sub nom.* S. v. S. (OTHERWISE H.), 26 T. L. R. 595—Evans, Pres.

# **XV. SUMMARY PROCEEDINGS IN MATRIMONIAL CAUSES.**

## **(a) Cruelty and Drunkenness.**

**42. "Persistent Cruelty"—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 4.]**—Persistent cruelty under sect. 4 of the Summary Jurisdiction (Married Women) Act,



# **XV. Summary Proceedings in Matrimonial Causes—Continued.**

1895, means something more than such cruelty as would entitle a petitioner in the Divorce Division to a judicial separation.

CORNALL *v.* CORNALL, 74 J. P. 379—Div. Ct.

## **(b) Desertion.**

See POOR LAW, No. 5.

## **(c) Evidence.**

**43. Wife's Evidence—Corroboration—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).]**—*Per* Deane, J., the rule adopted in the Divorce Division, that the evidence of a wife should be corroborated, is applicable to cases under the Summary Jurisdiction (Married Women) Act, 1895.

FORSTER *v.* FORSTER, 54 Sol. Jo. 403—Div. Ct.

## **(d) Jurisdiction.**

**44. Order for Payment of Weekly Sum to Wife—Enforcement of Order—No Sufficient Distress—Conviction—Imprisonment—Proof of Means—Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 4—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 54—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 9.]**—Where an order has been made under the Summary Jurisdiction (Married Women) Act, 1895, that a husband shall pay a weekly sum to his wife, such order may be enforced by an order of imprisonment, in default of sufficient distress, without proof that the husband had the means to pay the sum in respect of which he has made default.

R. *v.* RICHARDSON AND OTHERS, JUSTICES, [EX PARTE SHERRY, [1909] 2 K. B. 851; 79 L. J. K. B. 13; 101 L. T. 541; 73 J. P. 434; 25 T. L. R. 711—Div. Ct.]

## **(e) Maintenance.**

[No paragraphs in this vol. of the Digest.]

## **(f) Practice.**

**45. Appeal to Divisional Court—Finding of Fact by Justices—Different Inference of Fact on Appeal—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39).]**—A Divisional Court is not bound by the finding of fact on the part of justices who have made an order under the Summary Jurisdiction (Married Women) Act, 1895, but is entitled to draw a different inference of fact from the evidence.

FORSTER *v.* FORSTER, 54 Sol. Jo. 403—Div. Ct.

**46. Separation Order by Justices—Use of Printed Form.]**—Observations by Deane, J., as to the use of printed forms in drawing up separation orders under the Summary Jurisdiction (Married Women) Act, 1895.

HOLDEN *v.* HOLDEN AND PEARSON, 27 T. L. R. [38—Deane, J.]

# **IDIOTS.**

See LUNATICS AND PERSONS OF UNSOUND MIND.

# **ILLEGAL ARREST AND IMPRISONMENT.**

See CRIMINAL LAW; TRESPASS.

# **ILLEGITIMACY.**

See BASTARDY.

# **IMBECILITY.**

See LUNATICS.

# **IMMIGRATION.**

See ALIENS.

# **IMMORAL CONTRACTS.**

See CONTRACT.

# **IMPRISONMENT.**

See CRIMINAL LAW AND PROCEDURE; PRISONS AND REFORMATORIES.

# **INCLOSURE.**

See COMMONS; COPYHOLDS AND MANORS; HIGHWAYS; OPEN SPACES.

# **INCOME AND CAPITAL.**

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## INCOME TAX.

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## III. DEDUCTION OF TAX FROM RENT

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## I. TAXABLE INCOME.

## (a) In General.

1. *Compensation Authority under Licensing Act, 1904* — *Interest on Compensation Fund* — *Liability of Quarter Sessions* — *Income Tax Act, 1842* (5 & 6 Vict. c. 35), s. 40, *Sched. D* — *Customs and Inland Revenue Act, 1888* (51 & 52 Vict. c. 8), s. 24 — *Licensing Act, 1904* (4 Edw. 7, c. 23), s. 3 — *Licensing Rules, r. 60*.] — Quarter sessions, as the compensation authority under the Licensing Act, 1904, are liable to pay income tax on money standing to the credit of the compensation fund which is earning interest.

Where a person receives interest from which income tax has not been deducted, such person is liable to pay income tax thereon, notwithstanding that by sect. 24 of the Customs and Inland Revenue Act, 1888, the duty is imposed upon the person paying the interest to deduct income tax therefrom.

GLAMORGAN QUARTER SESSIONS *v.* WILSON, [1910] 1 K. B. 725; 79 L. J. K. B. 454; 102 L. T. 500; 74 J. P. 299; 26 T. L. R. 351 — Bray, J.

2. *Profits or Gains* — *Sale by a Company of its Whole Undertaking to a New Company before Producing-Stage Reached* — *Income Tax Act, 1842* (5 & 6 Vict. c. 35), *Sched. D*.] — A rubber syndicate, a limited company, included in its objects as set forth in its memorandum of association (a) the acquisition and development of rubber estates and the cultivation and manufacture of rubber, and (b) the sale of the whole or any part of the business or property of the company. It expended £29,500 in the purchase and development of estates, but finding its capital insufficient to develop the estates until they reached the producing-stage it sold its whole undertaking to a new company at the price of £38,500, paid partly in money and partly in shares in the new company.

HELD — that the £9,000, being the difference between the sums expended in purchase and development and the sale price, was not liable to income tax.

TEBRAU (JOHORE) RUBBER SYNDICATE, LD. *v.* [FARMER, [1910] S. C. 906; 47 Sc. L. R. 816 — Ct. of Sess.]

## (b) Profits earned Abroad.

[No paragraphs in this vol. of the Digest.]

## II. ASSESSMENT AND COLLECTION.

## (a) In General.

3. *Incorrect Statement of Income* — *Not Fraudulent* — *Negligence* — *Penalty* — *Income Tax Act, 1842* (5 & 6 Vict. c. 35), s. 55. — A person who has delivered a statement of his income chargeable with income tax which, through negligence or carelessness, but without fraud, is incorrect, is liable to the penalty of £50 under sect. 55 of the Income Tax Act, 1842.

*Lord Advocate v. Savers* ((1898) 25 R. 242; 35 Sc. L. R. 190 — Ct. of Sess.) approved.

Decision of C. A. ([1909] 1 K. B. 694; 78 L. J. K. B. 708; 100 L. T. 275; 25 T. L. R. 342) reversed.

ATTORNEY-GENERAL *v.* TILL, [1910] A. C. 50; [79 L. J. K. B. 141; 101 L. T. 819; 26 T. L. R. 134; 54 Sol. Jo. 132; 47 Sc. L. R. 601 — H. L.]

4. *Continuity of Business* — *Single Ship Company* — *Ship Lost* — *Power to Acquire Another Ship*.] — A company was formed to purchase and trade with a steamship, and, in the event of her loss or sale, to acquire some other steamship, "but so that the company shall not own at any one time more than one ship."

The company purchased the *M.* in 1901, and traded with her till April 1st, 1906, when she was lost at sea. With the insurance moneys the company purchased the *V.*, and she commenced her voyages on October 17th, 1906.

HELD — that the company were carrying on one business throughout, and that a new business was not started when the *M.* was lost and the *V.* was acquired.

MERCHANT STEAMSHIP CO., LD. *v.* TURNER, [1910] 2 K. B. 923; 102 L. T. 363 — Bray, J.

## (b) Deductions.

5. *Tied House* — *Compensation Levy* — *Deduction from Brewery Company's Profits and Gains* — *Income Tax Act, 1842* (5 & 6 Vict. c. 35), s. 100 — *Licensing Act, 1904* (4 Edw. 7, c. 23), s. 3. — The compensation levy paid by a brewery company under the Licensing Act, 1904, in respect of licensed premises, which the company own and let to tenants as tied houses for a consequently small rent, may be deducted in arriving at the assessable amount of the company's profits and gains under Sched. D to the Income Tax Acts, inasmuch as it is a payment essential to the earning of their profits.

Decision of Channell, J. ([1909] 1 K. B. 711; 78 L. J. K. B. 492; 100 L. T. 541; 73 J. P. 244; 25 T. L. R. 353) reversed (Kennedy, L.J., dissenting).

SMITH *v.* LION BREWERY CO., LD., [1909] [2 K. B. 912; 78 L. J. K. B. 1089; 101 L. T. 145; 73 J. P. 447; 25 T. L. R. 748; 53 Sol. Jo. 696; 16 Manson, 326 — C. A.]

6. *Fire Insurance Company* — *Sums Carried Forward Annually to Cover Unexpired Risks*.] — The respondents, a fire insurance company, had since 1888 carried forward annually in their published accounts 40 per cent. of their yearly

## II. Assessment and Collection—Continued.

premium receipts in respect of the annual outstanding liability for unexpired risks. For the year ending April 5th, 1906, the sum thus carried forward amounted, on a three years' average, to £18,778, and this sum the respondents claimed to deduct in ascertaining their profits and gains. The Commissioners found as a fact that 40 per cent. of the premium income was a reasonable and proper amount to carry forward in respect of unexpired risks, and they therefore came to the conclusion that the respondents were entitled to the deduction claimed.

HELD—that, in view of the Commissioners' finding of fact, the £18,778 was properly deductible by the respondents in ascertaining their profits and gains.

*General Accident, Fire and Life Assurance Corporation v. McGowan* ([1908] A. C. 207) distinguished.

CLARK (SURVEYOR OF TAXES) *v.* SUN INSURANCE OFFICE, 102 L. T. 336; 26 T. L. R. 341—Bray, J.

7. *Payments to Trade Association—Association Formed for Keeping Up Prices—Income Tax Act, 1842* (5 & 6 Vict. c. 35), s. 100.]—The appellants, who were manufacturers of steel hoops, were members of a trade association formed for the purpose of keeping up prices, and thus earning larger profits by its members agreeing to adhere to fixed prices. By the rules of the association, if any member invoiced more than the proper percentage of goods, a fixed amount of 10s. per ton on the excess was paid by that member to the association, which distributed the payment in due proportion amongst those members who had invoiced less than their proportionate quantities. For the year 1907–8 the appellants sought, in arriving at the assessable amount of their profits and gains, to deduct the sum of £74 16s., being the average excess of payments to, over amounts received from, the association, and likewise the sum of £241 10s. as payments towards the administration expenses of the association.

HELD—that these payments to the association were proper deductions to be made in arriving at the assessable amount of the appellants' profits and gains, inasmuch as they were exclusively expended for the purposes of the appellants' trade.

*Watney v. Musgrave* ((1880) 5 Ex. D. 241), *Rhymney Iron Co. v. Fowler* ([1896] 2 Q. B. 79), and *Brickwood v. Reynolds* ([1895] 1 Q. B. 95) distinguished.

GUEST, KEEN AND NETTLEFOLDS, LD. *v.* FOWLER, [1910] 1 K. B. 713; 79 L. J. K. B. 563; 102 L. T. 361; 26 T. L. R. 337—Bray, J.

8. *Expenditure when Profit not Reaped Within the Year—Capital or Income Expenditure?—Income Tax Act, 1842* (5 & 6 Vict. c. 35), *Sched. D, Case I, rr. 1 and 3.*—The mere fact that expenditure is incurred in order to earn profits in future years, and is not solely referable to a profit which is reaped within the year, does not show that the expenditure is not a proper deduction in estimating the profits of the year. *Prima*

*facie*, an expense which recurs each year, such as weeding on a rubber plantation, is income expenditure, and is not a "sum employed as capital."

A rubber company made a profit in its second year, but a loss in its first year. In arriving at the amount of that loss for the purpose of income tax assessment, the assessor only allowed one-seventh of the general expenditure, such as superintendence and weeding, on the ground that at that time only one-seventh of the plantation was in bearing.

HELD—that the whole general expenditure should be allowed.

VALLAMBROSA RUBBER CO. *v.* INLAND REVENUE, [1910] S. C. 519; 47 Sc. L. R. 488—Ct. of Sess.

9. *Interest on Short Loans—Income Tax Act, 1842* (5 & 6 Vict. c. 35), s. 100, *Sched. D, First Case, r. 3.*—A financial and investment company in striking the balance of its profits or gains is entitled to debit its profits with interest paid to bankers in New York on short loans, as such loans are not capital.

SCOTTISH NORTH AMERICAN TRUST, LD. *v.* [FARMER, [1910] S. C. 966; 47 Sc. L. R. 832—Ct. of Sess.

## III. DEDUCTION OF TAX FROM RENT OR ANNUAL PAYMENTS.

See also No. 1, *supra*.

10. *Electric Lighting Works—Agreement—Payment of Half-yearly Sums—Income Tax Act, 1853* (16 & 17 Vict. c. 34), s. 40.]—By an agreement the plaintiffs undertook to provide a site and buildings, and the defendants undertook to fit them up so as to provide an efficient system of electric supply within the plaintiffs' district. It was contemplated that it would be necessary for the plaintiffs to borrow money for the purchase of the site and the erection of the buildings. The agreement, accordingly, further provided that the defendants should during its continuance pay to the plaintiffs half-yearly such sums as should be equal in amount to the sums that the plaintiffs should have paid during the preceding half-year for interest and sinking fund charges, on such sum, not exceeding £6,000, as should have been borrowed by the plaintiffs for the purchase of the said site and the erection of the said buildings. It was also provided that the interest payable by the defendants to the plaintiffs should be the actual sum paid by the plaintiffs.

HELD—that the sums so paid half-yearly by the defendants were annual payments within sect. 40 of the Income Tax Act, 1853, and that the defendants were entitled to deduct income tax therefrom.

SURBITON URBAN DISTRICT COUNCIL *v.* CALLENDER CABLE AND CONSTRUCTION CO., LD., 8 L. G. R. 244—Warrington, J.

11. *Purchase of Tramway Undertaking by Local Authority—Lease to Another Local Authority—Rent Calculated with Reference to Payment of Purchase Price in Instalments by*

### III. Deduction of Tax from Rent or Annual Payments—Continued.

*Lessor—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 40.*—It was agreed between the Corporations of B. and P. that the P. Corporation should purchase a certain tramway undertaking, and should grant a lease thereof for thirty years to the B. Corporation at a rent which would be sufficient to enable the P. Corporation to repay the principal of the loan to be raised by them to purchase the undertaking and the interest thereon by equal half-yearly instalments of such principal and interest within the period of thirty years. The B. Corporation claimed, in paying the rent, to be entitled to deduct income tax under sect. 40 of the Income Tax Act, 1853, on the whole amount of the half-yearly instalments paid by them.

**HELD**—that upon the true construction of the agreement, the rent was fixed without relation to income tax, and that the B. Corporation were entitled to deduct such tax from the rent under sect. 40 of the Income Tax Act, 1853, and that the payment of rent after such deduction amounted in law to payment of the full rent so as to discharge their obligations under the agreement.

**POOLE CORPORATION v. BOURNEMOUTH CORPORATION**, 130 L. T. Jo. 177; 74 J. P. N. C. 592—Neville, J.

**12. Insurance Company—Income from Investments Taxed at Source—Tax Deducted from Annuities Payable by Company—Annuities Payable from "Profits or Gains brought into Charge"—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 24, sub-s. 3—Costs against Crown in Revenue Cases.**—An insurance company in consideration of certain money payments granted annuities which were charged on the whole funds of the company. The company had a large income from invested capital from which income tax was deducted at the source, and the amount so paid was larger than if the company had been assessed on profits under Sched. D. The income from invested capital was much larger than the sum paid each year as annuities. The company also had an income from premiums, etc., not taxed at the source. No particular fund was set apart, earmarked, or specially charged in the books of the company with the payment of the annuities. In paying the annuities the company deducted the amount of the income tax due in respect thereof, and retained the amount of the tax so deducted.

**HELD**—that the company was entitled to retain the amount of the tax so deducted, inasmuch as where annuities such as those payable by the company are charged upon a tax-bearing fund amply sufficient to pay them in full, though not set apart for that purpose, they cannot be held to be "not payable" or "not wholly payable" out of profits or gains brought into charge within the meaning of sect. 24, sub-sect. 3, of the Customs and Inland Revenue Act, 1888.

Decision of the Court of Session ([1909] S. C. 847; 46 Sc. L. R. 499) reversed. Ordered that

the respondent do pay to the appellants their costs here and below.

**EDINBURGH LIFE ASSURANCE CO. v. LORD ADVOCATE**, [1910] A. C. 143; 79 L. J. P. C. 41; 101 L. T. 826; 26 T. L. R. 146; 54 Sol. Jo. 133; [1910] S. C. (H. L.) 13; 47 Sc. L. R. 94—H. L.

## INCORPOREAL HEREDITAMENTS.

See REAL PROPERTY AND CHATTELS  
REAL.

## INDECENT ASSAULT.

See CRIMINAL LAW.

## INDECENT EXPOSURE.

See CRIMINAL LAW.

## INDEMNITY.

See CRIMINAL LAW, No. 50; TRUSTS,  
No. 2.

## INDIA.

See DEPENDENCIES AND COLONIES.

## INDICTMENTS AND INFORMATIONS.

See CRIMINAL LAW AND PROCEDURE.

## INDUSTRIAL, PROVIDENT, AND SIMILAR SOCIETIES.

See CLUBS; FRIENDLY SOCIETIES;  
TRADE AND TRADE UNIONS.

**1. Dispute between Member and Society—Stay of Proceedings—Arbitration—Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 49.**—The rules of a provident society provided that all disputes arising between a member and the society should be settled by arbitration. An action having been commenced by a member of the society for a declaration (a) that resolutions passed by the committee of the society purporting to permit certain members to withdraw



**Industrial, Provident, and Similar Societies—**  
*(Continued.)*

from their membership or to give up shares, and authorising payments consequent thereon; and (b) further resolutions authorising the conveyance of land belonging to the society to certain members in consideration of the cancelling of their shares were *ultra vires* and void, the defendants applied that all proceedings in the action might be stayed on the ground that the matters in difference between the parties were disputes within the meaning of sect. 49 of the Industrial and Provident Societies Act, 1893.

**HELD**—that the disputes came within the purview of sect. 49, and that the proceedings must be stayed.

*Stone v. Liverpool Marine Society* ((1894) 63 L. J. Q. B. 471) applied.

*Cox v. HUTCHINSON*, [1910] 1 Ch. 513; 79 L. J. [Ch. 259; 102 L. T. 213; 26 T. L. R. 263; 54 Sol. Jo. 271—Warrington, J.

**2. Winding-up—Extension of Objects—New Department—Separate Rules—Unregistered—No Power of Liquidators to Deal with Assets of New Department.**—A society, formed for the purpose of carrying on trade as general dealers, manufacturers and agents, was registered under the Industrial and Provident Societies Act, 1876, and its rules were duly registered. Subsequently a building department of the society was formed, and separate rules for the building department were approved of at a special general meeting of the society, but neither the building department nor its rules were registered under any Act. Subsequently it was decided to wind up the society, and liquidators were appointed for the purpose of winding up its affairs:—

**HELD**—that the building department and the society were not separate societies; but that the building department, not being registered, had no legal existence, and could not be wound up in the present liquidation, or under the Companies Acts, and that the liquidators of the society had no power to deal with the assets of the building department, which must be administered in a separate Chancery action.

**IN RE LONDONDERRY EQUITABLE CO-OPERATIVE SOCIETY**, [1910] 1 I. R. 69—ROSS, J., Ireland.

**INDUSTRIAL SCHOOLS.**

*See PRISONS AND REFORMATORIES.*

**INEBRIATES.**

*See INTOXICATING LIQUORS.*

**INFANTS.**

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For Cruelty to Children and Offences under the Children Act, 1908, *see CRIMINAL LAW AND PROCEDURE*, II. (h), II. (v).

*See also BASTARDY; CRIMINAL LAW*, No. 52, II. (v); *EDUCATION*, IV., No. 12; *EXECUTORS*, No. 17; *GAMING*, No. 17; *HUSBAND AND WIFE*; *INTOXICATING LIQUORS*; *MASTER AND SERVANT*, Nos. 78, 83, 84, 85; *NEGLIGENCE*, Nos. 2, 4, 5; *PRACTICE*, No. 14; *WILLS*, No. 33.

**I. CUSTODY OF INFANTS.**

*See HUSBAND AND WIFE*, No. 19.

**II. GUARDIANSHIP.**

*See also HUSBAND AND WIFE*, XI. (4).

**1. Infant — Maintenance — Guardian — Account.**—By the will of a testator who died in 1901 the widow was left a moiety of the estate for life, the other moiety being left in trust for his two children, a son and daughter. The will provided that the trustees in the exercise of their statutory power to pay the whole or any part of the income of property held in trust for infants to parents or guardians should not be liable to account, but should have full power to pay the whole income to the widow (who was appointed guardian), she maintaining his children thereout. An income of £3,000 a year for the maintenance of the children was agreed upon, and £18,847 paid to the widow between the death of the father and the date at which the son attained the age of twenty-one. The son was not properly maintained; he required special medical attention, but his welfare was the last consideration and economy the first. The committee of the son's estate asked for a declaration that the son had not been properly maintained during the period between the death of his father and his attaining twenty-one, and to have an account taken on that footing,

**HELD**—that where money is paid on a condition, the Court will see the condition strictly fulfilled. The widow had not performed the condition upon which the money was paid, and there must be a declaration that the widow was liable to account for the £18,847, but she was entitled to be allowed a proper sum for the

### II. Guardianship—*Continued.*

maintenance and education of the plaintiff and his sister during the same period.

MACRAE v. HARNESS, 103 L. T. 629—Eady, J.

### III. LIABILITY OF INFANTS.

#### (a) Contracts.

See MASTER AND SERVANT, Nos. 141, 142.

#### (b) Necessaries.

[No paragraphs in this vol. of the Digest.]

#### (c) Torts.

[No paragraphs in this vol. of the Digest.]

#### (d) Miscellaneous.

2. *Action by Next Friend—Costs of Unsuccessful Litigation—Indemnity.*—An infant is *prima facie* liable to indemnify his next friend against costs properly incurred on his behalf, and such liability will be enforced by making the infant's property available to recoup the next friend in all cases where the Court is satisfied that the litigation has been prompted by motives of benevolence towards the infant, and has been conducted in his interest and with diligence and propriety.

STEEDEN v. WALDEN, [1910] 2 Ch. 393; 79 [L. J. Ch. 613; 103 L. T. 135; 26 T. L. R. 590; 54 Sol. Jo. 681—Eve, J.

### IV. PROPERTY OF INFANTS.

See also TRUSTS, No. 9.

3. *Infant Tenant in Tail in Remainder—Maintenance—Order Purporting to Authorise a Mortgage of Infant's Estate—Remaindermen not Parties to the Action—Order Declaring Infant Trustee and Appointing Persons to Mortgage—Deed of Disentail and Mortgage—Orders made per incuriam—Orders and Deed Inoperative.*—An infant was entitled under the legal limitations of a will (without the intervention of trustees) to real estates for an estate tail in remainder after a life estate. Orders were made by the Court that sums for the maintenance of the infant should be raised by a charge upon the interest of the infant in the settled estates, and such a deed was executed. A further order was made declaring the infant a trustee of his interest, and appointing persons to disentail and mortgage it for the above purpose. The persons entitled to estates in remainder after the estate of the infant were not parties to any of the actions or proceedings in which the orders were made. A deed of disentail and mortgage was made under the later order, and subsequently all the moneys secured were paid off and the mortgagees reconveyed the estates as directed by the orders.

HELD—that, as regards the authority to mortgage the settled estates, the earlier orders were made *per incuriam* and without jurisdiction, and were inoperative; that therefore the later order, which was founded on the earlier ones, did not come within sect. 30 of the Trustee Act, 1893, and was also made without jurisdiction; that

none of the orders were binding upon the remaindermen; that the deed of disentail and mortgage was consequently unauthorised and inoperative; and that the estates remained subject to the subsisting uses of the will, notwithstanding the order and the deed.

IN RE HAMBROUGH'S ESTATE. HAMBROUGH v. [HAMBROUGH, [1909] 2 Ch. 620; 79 L. J. Ch. 19; 101 L. T. 521; 53 Sol. Jo. 770—Warrington, J.

### V. GENERALLY.

4. *Capacity—Member of Corporation—"Any Person"—Eligibility of Infant as Member—Local Act—The Royal Naval School Act, 1840 (3 & 4 Vict. c. lxxxvi.), s. 3.*—A local Act under which a school was incorporated provided that any "person" who should pay a certain sum should be a member of the corporation of the school. An infant, a pupil of the school, paid the sum and claimed to vote as a member of the corporation. The Act neither authorised the inclusion of an infant as a member nor negatived it.

HELD—upon the construction of the Act and the circumstances of the case, that an infant was not eligible as a member of the corporation.

IN RE ROYAL NAVAL SCHOOL, SEYMOUR v. [ROYAL NAVAL SCHOOL, [1910] 1 Ch. 806; 79 L. J. Ch. 366; 102 L. T. 490; 26 T. L. R. 382; 54 Sol. Jo. 407—Eve, J.

### INFECTIOUS DISEASES.

See ANIMALS; PUBLIC HEALTH.

### INHABITED HOUSE DUTY.

See INCOME TAX.

### INHERITANCE.

See DESCENT AND DISTRIBUTION; REAL PROPERTY AND CHATTELS REAL.

### INJUNCTIONS.

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See also COMPANIES, Nos. 19, 21, 54; COPYRIGHT; LANDLORD AND TENANT, Nos. 11, 21; LOCAL GOVERNMENT, No. 19; NUISANCE; PRACTICE; TRADE, No. 1; TRADE MARKS, No. 18.

#### I. INTERLOCUTORY.

See also No. 5, *infra*.

1. *Interlocutory Injunction Granted by Probate Division—Undertaking as to Damaegs—Applica-*

### I. Interlocutory—Continued.

*tion to Enforce Undertaking—Division to which Application should be Made—Alleged Delay in making Application.*—Where an interlocutory injunction has been granted by the Probate Division on the usual undertaking as to damages, and an application is subsequently made to enforce that undertaking, such application should be to that Division, and not to the Chancery or King's Bench Division.

Although it cannot be said that under no circumstances ought delay in making the application to be an element to be considered, yet the right to enforce an undertaking as to damages is not lost if the application was not made when the injunction was dissolved or when the action came on for trial; but all the circumstances of the case must be taken into account.

Dictum of Jessel, M.R., on this point in *Smith v. Day* ((1882) 21 Ch. D. 421) dissented from.

*Griffith v. Blake* ((1884) 27 Ch. D. 474) considered.

Decision of Evans, Pres., affirmed.

IN RE HAILSTONE, HOPKINSON *v.* CARTER, [102 L. T. 877—C. A.]

**2. Local Authority — Motion to Restrain Removal of Drinking Fountain—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 51.**—A fountain had been removed by a local authority prior to the issue of a writ claiming an injunction to restrain the authority from removing it.

HELD—that no order could be made on a motion for an injunction, but that an order could be made for the fountain to be replaced, if at the trial the Court should decide that it ought to be replaced.

WOODWARD *v.* BATTERSEA CORPORATION, 74 [J. P. N. C. 136—Neville, J.]

### II. MANDATORY.

*See* No. 5, *infra*; HIGHWAYS, No. 15.

### III. GENERAL.

*See also* HUSBAND AND WIFE, No. 16.

**3. Complaint by Attorney-General — Case Proved—Right to Injunction.**—The Attorney-General, coming to complain that a public body is exceeding its powers, or committing some offence against a statute, is not entitled as a matter of right to say that, in all circumstances, on proving his case, the Court is bound to grant an injunction.

Dictum of Kekewich, J. ([1908] 2 Ch. 551, 562; 77 L. J. Ch. 836; 98 L. T. 310; 72 J. P. 20; 24 T. L. R. 126) overruled.

Dicta of Farwell, J. in *Attorney-General v. Wimbledon House Estate Co.* ([1904] 2 Ch. 34, 42), and of Vaughan Williams, L.J. in *Attorney-General v. London and North Western Railway Co.* ([1900] 1 K. B. 78, 87) approved.

ATTORNEY-GENERAL *v.* BIRMINGHAM, TAME, [AND REA DISTRICT DRAINAGE BOARD, [1910] 1 Ch. 48; 79 L. J. Ch. 137; 101 L. T. 796; 74 J. P. 57; 26 T. L. R. 93; 54 Sol. Jo. 198; 8 L. G. R. 110—C. A.]

**4. Wife's Bill of Costs Against Husband in Divorce Suit—Non-compliance with Order to Pay—Legacy Due to Husband—Injunction to Restrain Payment—R. S. C., Ord. 68, r. 1.**—Where a husband had failed to obey an order to pay certain taxed costs incurred by wife in a suit for divorce, and where he was entitled to a legacy:—

HELD—that there was power to grant an injunction restraining the payment of the legacy over to him.

BULLUS *v.* BULLUS, 102 L. T. 399; 26 T. L. R. [330; 54 Sol. Jo. 343—Bigham, Pres.]

*See* S. C. under HUSBAND AND WIFE, XI. (2).

**5. Contract of Service—Head Master of Non-provided School—Managers—Notice of Dismissal—Education Act, 1902 (2 Edw. 7, c. 42), s. 7.**—The managers of a non-provided public elementary school passed a resolution to terminate the head master's agreement with them, and sent him three months' notice in writing; but there was considerable doubt whether the notice was valid, and, if it was valid, whether it required the consent of the local education authority.

HELD—that notwithstanding *Davis v. Forman*, ([1894] 3 Ch. 634) and similar cases the Court had power to grant an interim injunction against the managers.

*Young v. Cuthbert* ([1906] 1 Ch. 451) applied. CRISP *v.* HOLDEN, 54 Sol. Jo. 784—Evans, Pres.

## INJURIES TO PASSENGERS.

*See* NEGLIGENCE; RAILWAYS.

## INNS AND INNKEEPERS.

### I. DUTY TO RECEIVE GUESTS.

[No paragraphs in this vol. of the Digest.]

### II. LIABILITY FOR LOSS OF GOODS.

*See also* INTOXICATING LIQUORS; LANDLORD AND TENANT.

## INNS OF COURT.

*See* BARRISTERS.

## INQUEST.

*See* CORONERS.

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INSURANCE.

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See also FRIENDLY SOCIETIES, Nos. 4, 5, 6; INCOME TAX, Nos. 6, 12; MASTER AND SERVANT, No. 30; WATERS, II. (d).

I. ACCIDENT.

1. *Coupon Insurance Policy — Conditions of Policy — Claim to be Made within Twelve*  
x, D.

*Months of the Registration of the Holder's Name — Liability of Company.*]—A coupon insurance policy against accident was issued by the appellant company, which provided that a claim by the assured must be made within twelve months of the registration of the holder's name. H. filled up the coupon, and sent it, together with the requisite premium, to the company for registration on December 25th, 1905. On January 4th, 1906, he received a letter, dated the previous day, enclosing an official acknowledgment, dated December 29th, 1905. The company did not, in fact, keep a regular register of the names, but in practice the applications were stamped, dated, and filed on being received, after which intimation was sent to the holder of the coupon, stating that the coupon had been duly received and registered. On December 28th, 1906, H. was injured in a railway accident, and died on December 29th, and his widow made a claim to the company on January 2nd, 1907.

HELD—that it was on the appellant company to prove the date of registration, and that they had failed to prove that the claim was not made within twelve months of registration of the deceased's name, and that, the balance of probabilities being also against them, they were liable on the policy.

Decision of the First Division of the Court of Session ([1909] S. C. 344; 46 Sc. L. R. 150) affirmed.

GENERAL ACCIDENT, FIRE, AND LIFE ASSUR-  
[ANCE CORPORATION, LD. v. ROBERTSON (OR  
HUNTER), [1909] A. C. 404; 79 L. J. P. C. 1;  
101 L. T. 135; 25 T. L. R. 685; 53 Sol. Jo.  
649; [1909] S. C. (H. L.) 30; 46 Sc. L. R. 786  
—H. L.

2. *Proviso Against Wilful or Negligent Exposure to Unnecessary Danger or Peril—Going too Near Edge of Cliff—Correct Inference.*]—A policy of accident insurance contained a proviso against wilful or negligent exposure of the assured to unnecessary danger or peril. The assured was seen near the edge of a cliff stooping as though looking for flowers. He had previously announced his intention of looking for wild flowers. Subsequently his body was found at the foot of the cliff. No one saw him fall.

HELD—that the arbitrator was right in drawing the inference that the assured went too near the edge of the cliff and in so doing was running a risk which no prudent man would have run, and that therefore the above proviso applied.

WALKER v. RAILWAY PASSENGERS ASSURANCE  
[Co., 129 L. T. Jo. 64—C. A.

II. FIRE.

See also INCOME TAX, No. 6; LAND-  
LORD AND TENANT, No. 11.

3. *Ratification of Insurance After Loss—Slip—Description of Property Insured.*]—A contract of fire insurance made without authority on behalf of a principal cannot be ratified by the principal after a loss has occurred within his knowledge.

The plaintiffs, who had a pianoforte factory at New Southgate, insured it at Lloyd's. The



## II. Fire—Continued.

insurance was effected through a bank manager at New Southgate, who thereafter moved to the Bank House, Newington Green, and notified the insurance broker of his change of address. In negotiations for a fresh policy with new underwriters, the insurance broker made out and got initialled the following slip: "Insured on account of . . . on building (Pianoforte Factory). Grover and Grover (Ltd.), The Bank House, Newington Green, N."

HELD—that the underwriters were entitled to assume that the plaintiffs' factory was situated at the place mentioned on the slip.

GROVER AND GROVER, LD. v. MATHEWS, [1910]  
[2 K. B. 401; 79 L. J. K. B. 1025; 102 L. T. 650; 26 T. L. R. 411; 15 Com. Cas. 249—  
Hamilton, J.]

4. *Statutory Condition—Gasoline "Stored or Kept" in Insured Building—Ontario.*—A statutory condition applicable to fire insurance in Ontario provided that the insurance company should not be liable for loss or damage occurring while gasoline was "stored or kept" in the insured building. The appellant insured a building used by him as a drug store and furniture shop. He had an assistant, a qualified chemist, who used the upper part of the building as a dwelling-house. This assistant had a gasoline stove which he had used occasionally for domestic purposes and later on he brought it down to the shop and used it in making syrups, and while doing so the building took fire and was burnt down. The only gasoline in the building was the small quantity which was in the stove.

HELD—that the expression in the statutory condition as to gasoline being "stored or kept" imported the notion of warehousing or depositing for safe custody or keeping gasoline in stock for trade purposes, and did not apply to the small quantity which was in the stove for consumption and, consequently, that there had been no breach of the condition and that the appellant was entitled to recover from the insurance company.

Decision of Supreme Court of Canada (41 Can. S. C. R. 491) reversed.

THOMPSON v. EQUITY FIRE INSURANCE CO.  
[AND UNION BANK OF CANADA, [1910] A. C. 592; 80 L. J. P. C. 13; 103 L. T. 153; 26 T. L. R. 616—P. C.]

## III. GENERAL.

See also *BANKRUPTCY*, Nos. 36, 37;  
*GUARANTEE*, II.

5. *Theft—Exception—Theft by Member of Staff—Employed an Accessory before the Fact.*—A policy issued by the defendant insuring against loss by theft or robbery or burglary, contained the following clause:—"Provided always that there shall be no claim on this policy . . . for loss by theft, robbery, or misappropriation by members of the assured's . . . business staff . . ." A theft of the assured's goods having been committed by a gang of men who gained admittance to the insured premises through the agency of an *employé* of the assured:—

HELD—that there had been a loss by theft by a member of the assured's business staff

within the meaning of the proviso in the policy, and therefore that the defendant was not liable.

Decision of Walton, J. ([1910] W. N. 147; 102 L. T. 915; 26 T. L. R. 501; 54 Sol. Jo. 565) affirmed.

SAQUI AND ANOTHER v. STEARNS, [1910]  
[W. N. 257; 103 L. T. 583; 27 T. L. R. 105; 55 Sol. Jo. 91—C. A.]

6. *Fidelity—Assistant Overseer—Clerk to Parish Council—Defalcations in Accounts as Clerk not Covered by Policy Given to Guardians in Respect of Defaulter's Appointment as Assistant Overseer.*—A. was appointed assistant overseer of the parish of H., and by virtue of his appointment under sect. 17, sub-sect. 2, of the Local Government Act, 1894, he became clerk to the parish council of H. The defendants entered into a bond guaranteeing the faithful performance of his duties as assistant overseer. A committed defalcations in respect of moneys received by him as clerk to the parish council.

HELD—that the defalcations of H. in relation to the parish council accounts were not covered by the terms of the bond guaranteeing the faithful performance of his duties in the office of assistant overseer.

COSFORD UNION AND OTHERS v. POOR LAW AND  
[LOCAL GOVERNMENT OFFICERS' MUTUAL  
GUARANTEE ASSOCIATION, LD., 103 L. T. 463;  
8 L. G. R. 995—Div. Ct.]

7. *Fidelity—Two Policies Covering Loss by Defalcations of Employés—Policies not Coterminous—Loss—Contribution Between Insurers.*—The plaintiffs, an American insurance company, issued a policy by which they covenanted to pay an American bank for any loss or damage caused by dishonesty of an employé, the liability for any individual employé not to be greater than the amount set against his name in a schedule. Among the persons named in the schedule was K., who was insured up to \$2,500. The bank also took out a policy at Lloyd's for £40,000, and by this policy the underwriters were to be liable for loss sustained by the loss or destruction on the assured's premises of bonds, banknotes, and other documents, owing to fire or burglary, and also for loss through the dishonesty of clerks or other employés. During the currency of the two policies K. made defalcations to the extent of \$2,680. The bank claimed from the plaintiffs the full amount of the insurance—\$2,500, leaving a balance not covered by that policy of \$180. The bank then claimed and were paid the \$180 on the Lloyd's policy. In an action by the plaintiffs against the defendant, one of the underwriters on the Lloyd's policy, who admitted that some contribution was due:—

HELD—(1) that English law, and not American law, applied; and (2) that the defendant was liable on the basis that the underwriters should bear a proportion of the whole loss of \$2,680 in the ratio of 2,680 to 2,500.

AMERICAN SURETY COMPANY OF NEW YORK  
[v. WRIGHTSON, 27 T. L. R. 91—Hamilton J.]

## IV. LIFE.

See also CRIMINAL LAW, II. (h);  
MORTGAGE, XVI.

## (a) Avoidance of Policy and Recovery of Premium: Insurable Interest.

See CRIMINAL LAW, No. 53.

## (b) "Carrying on Business."

[No paragraphs in this vol. of the Digest.]

## (c) Construction of Policy.

[No paragraphs in this vol. of the Digest.]

## (d) Jurisdiction of Justices.

[No paragraphs in this vol. of the Digest.]

## (e) Practice.

See also MORTGAGE, No. 6.

8. *Fund Deposited in Court—Application for Payment of Dividends—Petition—Assurance Companies Act, 1909* (9 Edw. 7, c. 49), ss. 1, 2—*Board of Trade Order, 1910*, rr. 2, 4, 9—*R. S. C., Ord. 55, r. 2* (3).—An application for payment out of dividends on stock lodged in Court by a corporation or company in respect of its life assurance business in pursuance of sects. 1 and 2 of the Assurance Companies Act, 1909, and of r. 2 of the Board of Trade Order, 1910, should be made by petition unless and until a new Rule of Court be made directing them to be made by summons in chambers.

IN RE ROYAL EXCHANGE ASSURANCE CORPORATION, [1910] W. N. 211; 129 L. T. Jo. 571; 45 L. J. N. C. 666—Neville, J.

## (f) Transfer, Mortgage and Alteration of Rights.

See also MORTGAGE, No. 5.

9. *Insurance for Benefit of Wife—Assignment by Husband during Lifetime of Wife—Interest or Spes Successionis—Married Women's Property Act, 1870* (33 & 34 Vict. c. 93), s. 10.—Where a trust is created by a policy of insurance expressed to be made by a husband for the benefit of his wife under sect. 10 of the Married Women's Property Act, 1870, the interest of the husband in the policy is (subject to the trust in favour of the wife) an interest capable of assignment by the husband during the lifetime of the wife.

ROBB v. WATSON, [1910] 1 I. R. 243; 44 I. L. T. [151—Ross, J., Ireland.

## (g) Miscellaneous.

10. *Life Assurance Company—Transfer of Business—Return of Deposit—No Abandonment of Claims by Policy-Holders—Life Assurance Companies Acts, 1870* (33 & 34 Vict. c. 61), ss. 3, 14; and 1872 (35 & 36 Vict. c. 41), s. 7.—A life assurance company is not entitled to a return of its deposit, required to be made under sect. 3 of the Life Assurance Companies Act, 1870, unless (1) the fund accumulated out of premiums amounts to £40,000, or (2) on a transfer of its business all its policy-holders have by writing abandoned their claims against the transferor company and accepted the liability of the transferee company.

*Ex parte Scottish Economic Life Assurance Society* ((1890) 45 Ch. D. 220) followed.

IN RE LIFE AND HEALTH ASSURANCE ASSOCIATION, LD., [1910] 1 Ch. 458; 79 L. J. Ch. 262; 102 L. T. 160; 26 T. L. R. 277; 54 Sol. Jo. 290; 17 Manson, 75—Eve, J.

Subsequently a petition for payment out of the deposit was granted, the required consents in writing having been obtained from the holders of all policies not otherwise accounted for by lapse on non-payment of premium, etc., by surrender on payment or by payment on maturity (130 L. T. Jo. 150)—Eve, J.

## V. MARINE.

See also REVENUE, No. 11.

## (a) Brokers' Rights and Liabilities.

[No paragraphs in this vol. of the Digest.]

## (b) Collision.

[No paragraphs in this vol. of the Digest.]

## (c) Concealment.

11. *Facts Material to Risk—Non-Disclosure—Master's Record—Warranty—Marine Insurance Act, 1906* (6 Edw. 7, c. 41), ss. 17, 18 (3) (d), 33 (3), and 39 (1).—A policy of insurance on the hull of a sailing ship is not voided by non-disclosure to the insurers of the fact that the master had not been at sea for twenty-two years, and on the last occasion on which he had acted as master had lost his ship and had his certificate suspended for six months, in respect that these are matters which are covered by the warranty of seaworthiness.

"GUNFORD" SHIP CO., LD. v. THAMES AND [MERSEY MARINE INSURANCE CO., LD., [1910] S. C. 1072; 47 Sc. L. R. 860—Ct. of Sess.

12. *Facts Material to Risk—Non-Disclosure—Over Insurance—Marine Insurance Act, 1906* (6 Edw. 7, c. 41), ss. 17, 18, 32.—A valued policy on the hull of a sailing ship is not voided by non-disclosure to the insurers of concurrent policies on freight and disbursements, and of honour policies taken by the managing owner in favour of himself as an individual.

"GUNFORD" SHIP CO., LD. v. THAMES AND [MERSEY MARINE INSURANCE CO., LD., [1910] S. C. 1072; 47 Sc. L. R. 860—Ct. of Sess.

## (d) Construction.

13. *"Grounding or Stranding"—Vessel Sinking in Deep Water.*—A policy insuring against the loss of a vessel by "grounding or stranding" does not cover a loss by the sinking of the vessel in deep water.

BAKER-WHITELEY COAL CO. v. MARTEN, 26 [T. L. R. 314—Pickford, J.

## (e) Damages and Contribution.

[No paragraphs in this vol. of the Digest.]

## (f) Freight and Cargo.

14. *Insurance of Cargo against Total Loss by Total Loss of Vessel—Constructive Total Loss of*

**V. Marine—Continued.**

*Vessel—Civil Code of Lower Canada, s. 2522.*—A cargo of cement shipped by barge was insured against total loss "by total loss of the vessel." During the voyage the barge struck against a snag, in consequence of which a hole was knocked in her bow. She settled down and about 70 ft. of her deck was completely submerged. The cement was completely destroyed as cement.

**HELD**—that there had been, within the meaning of the policy, a total loss of the cargo insured, notwithstanding that the barge might be afterwards floated and repaired.

Decision of Supreme Court of Canada (41 S. C. R. 639) reversed.

**MONTREAL LIGHT, HEAT, AND POWER CO. v. [SEDGWICK AND OTHERS, [1910] A. C. 598; 80 L. J. P. C. 11; 103 L. T. 234; 26 T. L. R. 657—P. C.]**

**(g) General Average.**

[No paragraphs in this vol. of the Digest.]

**(h) Insurable Interest.**

[No paragraphs in this vol. of the Digest.]

**(i) Mortgages and Assignments.**

**15. Assignment—Action by Assignee of Policy—Right of Set-off—Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 50.**—A claim for a total loss upon a policy of insurance is a claim for unliquidated damages in the nature of an indemnity.

In an action by the assignee of a policy, claims against the assignor for losses on other policies cannot be set off, as the right of set-off by way of defence to an assignee's claim is limited to defences arising out of the contract contained in the policy assigned.

*Pellas v. Neptune Marine Insurance Co. ((1879) 5 C. P. D. 34) followed.*

**BAKER v. ADAM, 102 L. T. 248; 15 Com. Cas. [227; 11 Asp. M. C. 368—Hamilton, J.]**

**(j) Practice.**

[No paragraphs in this vol. of the Digest.]

**(k) Risk: Nature, Duration, Change, etc.**

**16. Port Risk Policy—Duration—Vessel Leaving Moorings.**—The risk under a "port risk" policy ceases when the insured vessel commences her voyage, and the voyage commences when the vessel, equipped for sea, has commenced to navigate on her voyage, and no longer lies at her moorings.

**MERSEY MUTUAL UNDERWRITING ASSOCIATION, LD. v. POLAND AND OTHERS, 26 T. L. R. 386; 15 Com. Cas. 205—Hamilton, J.]**

**(l) Seaworthiness.**

**17. Competence of Master—Total Loss—Marine Insurance Act, 1906 (6 Edw. 7, c. 41), ss. 33, 39.**—Circumstances in which held that a sailing ship which became a total loss was not unsea-

worthy in respect of the alleged incompetence of the master.

**"GUNFORD" SHIP CO., LD. v. THAMES AND [MERSEY MARINE INSURANCE CO., LD., [1910] S. C. 1072; 47 Sc. L. R. 860—Ct. of Sess. See S. C. under V. (c), supra.]**

**(m) Subrogation.**

[No paragraphs in this vol. of the Digest.]

**(n) Time Policies and Valued Policies.**

[No paragraphs in this vol. of the Digest.]

**(o) Total Loss and Constructive Total Loss.**

*See also No. 12, supra.*

**18. Policy on Freight—Notice of Abandonment—Freight Subsequently Earned.**—The plaintiffs took out a policy of insurance with the defendants on freight proposed to be earned by their ship on a voyage from Monte Video to New York. The ship left Monte Video on November 1st, 1905, but, becoming disabled by reason of heavy weather, she was towed into Charlestown on January 10th, 1906. After a survey had been held, notice of abandonment was given to the underwriters on January 20th, on the ground that there had been a constructive total loss of freight. They refused to accept the notice, but agreed that January 20th should be treated as the date on which a writ was issued. The vessel was subsequently sold, and after being repaired, was towed into New York, where the freight was collected by the purchasers.

**HELD**—that as there was a constructive total loss of freight at the date which was agreed as date of writ, the plaintiffs were entitled to recover the amount of the insurance, although the freight was in fact subsequently earned.

**BARQUE ROBERT S. BESNARD CO., LD. v. [MURTON, 101 L. T. 285; 53 Sol. Jo. 717; 14 Com. Cas. 267; 11 Asp. M. C. 299—Pickford, J.]**

**(p) Warranty.**

*See also No. 11, supra.*

**19. Deviation Clause—Barratry—Notice of Deviation—Amount of Premium Fixed after Breach of Warranty—Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 49 (1) (g), and Sched. r. 11.**—A policy effected on commissions on the *Viduco* included barratry of the master among the insured perils. The policy also contained the following clause: "In the event of the vessel making any deviation or change of voyage, it is mutually agreed that such deviation or change shall be held covered at a premium to be arranged, provided due notice be given by the assured on receipt of advice of such deviation or change of voyage." The master made two voyages at the instance of the concessionnaire of certain rights, in respect of which he received payment. These voyages were made without the knowledge or consent of the assured, who remained in ignorance of them until after the loss; neither was the fact that payments had been made communicated to them. On the occasion of the second voyage the *Viduco* became

V. Marine—Continued.

a total loss. Notice of the deviation was not given to the underwriters until after the loss.

HELD—in an action on the policy, that both voyages were barratrous, and, although deviations, they did not put an end to the policy, and the assured were entitled to recover.

Semle, that the notice of deviation was good, although not given until after the loss, and that the amount of additional premium must be paid on the assumption that the fact of the deviation was known to both parties at the time it took place.

MENTZ DECKER & Co. v. MARITIME INSURANCE [Co., [1910] 1 K. B. 132; 79 L. J. K. B. 104; 101 L. T. 808; 15 Com. Cas. 17; 11 Asp. M. C. 339—Hamilton, J.

20. Frozen Meat Cargo—"Warranted Free from Particular Average and Loss unless caused by Stranding, Sinking, Burning, or Collision of the Ship or Craft"—Cargo Condemned by Sanitary Authorities—Total Loss.]—In an action to recover for a total loss under a policy of insurance of a cargo of frozen meat, evidence was given on behalf of the underwriter by a number of other underwriters to the effect that a clause in the policy, "Warranted free from particular average and loss, unless caused by stranding, sinking, burning, or collision of ship or craft," etc., had a well recognised meaning—viz., that the policy was warranted free not only from particular average unless it was caused by stranding, sinking, burning, or collision of ship or craft, but was also free from loss of the subject-matter, total or partial, unless caused in the same way.

HELD—upon the evidence that the words had acquired that recognised meaning, and that as the loss in question had not occurred by stranding, sinking, burning, or collision of the ship or craft, the defendant was not liable on the policy.

OTAGO FARMERS' CO-OPERATIVE ASSOCIATION [OF NEW ZEALAND, LD. v. THOMPSON, [1910] 2 K. B. 145; 79 L. J. K. B. 692; 102 L. T. 711; 15 Com. Cas. 28—Hamilton, J.

INTEREST.

See BANKRUPTCY; COMPANIES; CONTRACTS; MONEY; PRACTICE AND PROCEDURE.

INTERNATIONAL LAW.

See ALIENS; CONFLICT OF LAWS.

INTERPLEADER.

See BANKRUPTCY, No. 19; BILLS OF SALE; COURT; EXECUTION.

INTERPRETATION OF DOCUMENTS.

See DEEDS AND DOCUMENTS.

INTERPRETATION OF STATUTES.

See STATUTES.

INTERPRETATION OF WILLS.

See WILLS.

INTERROGATORIES.

See DISCOVERY.

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I. APPLICATIONS FOR NEW LICENCES.
[No paragraphs in this vol. of the Digest.]



## II. RENEWAL OF LICENCES.

### (a) Jurisdiction and Procedure.

See also II. (b), *infra*.

1. *Offer of Surrender of Other Licences—Contribution to Compensation Fund—Licensing Act, 1904* (4 Edw. 7, c. 23).]—In deciding the question of the renewal of two or more licences belonging to different owners, the compensation authority are not entitled to take into consideration what, if any, licences the respective owners would be prepared to surrender, or what contribution they would be prepared to make to the compensation fund.

Decision of Div. Ct. ([1910] 1 K. B. 10; 72 L. J. K. B. 53; 101 L. T. 545; 73 J. P. 515; 26 T. L. R. 25; 54 Sol. Jo. 66) reversed (Vaughan Williams, L.J., dissenting).

R. v. SHANN AND OTHERS, *EX PARTE* WILSONS' [BREWERY, LD., [1910] 2 K. B. 418; 79 L. J. K. B. 736; 102 L. T. 700; 74 J. P. 273; 26 T. L. R. 435; 54 Sol. Jo. 474—C. A.

2. *Refusal by Licensing Justices—Ground of Refusal—Licence Void—Licensing Act, 1904* (4 Edw. 7, c. 23), s. 1 (1).]—The executors of the will of a lessee of certain premises which had been licensed for many years as an inn, alehouse and victualling house, acting by the appellant, who was the licensee, endeavoured to procure a purchaser or occupier who would carry on the business, but their efforts were unavailing. While these efforts were being made, no business under the licence was carried on, except that some exciseable liquors in small quantities were sold from time to time for consumption on the premises with a view to preserving the continuity of the business. A notice of objection to the renewal of the licence was given on the grounds (1) that the appellant was neither keeping nor about to keep the premises as an inn, and (2) that the renewal of the licence would be void. The licensing justices refused to renew the licence on the ground that in the circumstances the renewal would be void, and quarter sessions, on appeal, held that the licensing justices had jurisdiction in their discretion to refuse to renew the licence, and dismissed the appeal.

HELD—that the justices had jurisdiction to renew the licence and that they were wrong in holding that such renewal would be void.

WEBB v. CITY OF LONDON LICENSING JUSTICES, [102 L. T. 70; 74 J. P. 79—Div. Ct.

3. *Club—Power to Strike Off the Register—Occupation of Premises formerly Licensed—Refusal to Renew Licence within Twelve Months preceding Formation of Club—Provisional Licence—Licensing Act, 1902* (2 Edw. 7, c. 28), s. 28 (1) (f).—*Licensing Rules, 1904*, rr. 41, 43.]—Sect. 28 (1) (f) of the Licensing Act, 1902, provides that a club may be struck off the register on the ground that it occupies premises in respect of which, within twelve months next preceding the formation of the club, the renewal of a licence has been refused.

HELD—that the period of twelve months mentioned in this enactment runs from the date of the refusal of the compensation authority to

renew the licence and not from the date of the expiry of a provisional licence granted by them under Rules 41 and 43 of the Licensing Rules, 1904, pending the determination of the amount of compensation payable.

PLAISTOW WORKING MEN'S CLUB AND ANOTHER [v. HARROD, [1910] 1 K. B. 582; 79 L. J. K. B. 654; 102 L. T. 20; 74 J. P. 100; 26 T. L. R. 216—Div. Ct.

### (b) Compensation on Refusal.

4. *Company—Debtenture Trust Deed—Compensation Money—Purchase-Money—Capital Moneys—Investment—Licensing Act, 1904* (4 Edw. 7, c. 23).]—Compensation money under the Licensing Act, 1904, received by the trustees of a debenture trust deed executed by a company owning licensed houses, may be treated as "purchase-money" or "capital moneys" for the purpose of its application by them in accordance with the terms of the deed.

Dawson v. Braime's Tadcaster Breweries, Ltd. ([1907] 2 Ch. 359) followed.

Under a general power to invest such purchase-money in real or leasehold property, such trustees may apply it in either the purchase or (if the security is sufficient) the mortgage of licensed messuages and premises belonging either to the company or to third parties.

IN RE BENTLEY'S YORKSHIRE BREWERIES, LD., [1909] 2 Ch. 609; 78 L. J. Ch. 704; 101 L. T. 488; 53 Sol. Jo. 715; 16 Manson, 296—Warrington, J.

5. *Compensation Charge—Deduction from Rent—"Unexpired Term"—Reversionary Lease—Licensing Act, 1904* (4 Edw. 7, c. 23), s. 3 (3), and Sched. II.].—The "unexpired term" mentioned in Sched. II. to the Licensing Act, 1904, according to the length of which is calculated the deduction that may be made from rent in respect of the compensation charge, does not include, besides the term of an existing tenancy, the term of a reversionary lease to commence on the day next but one after the expiration of the existing tenancy.

Decision of C. A. ([1910] 1 K. B. 236; 79 L. J. K. B. 233; 101 L. T. 766; 74 J. P. 73; 26 T. L. R. 125; 54 Sol. Jo. 116) affirmed.

LORD LLANGATTOCK v. WATNEY, COMBE, REID & CO., LD., [1910] A. C. 394; 79 L. J. K. B. 559; 102 L. T. 548; 74 J. P. 194; 26 T. L. R. 418; 54 Sol. Jo. 456—H. L.

6. *Compensation Charge—Deduction from Rent—Covenant by Tenant to Pay all Impositions and Outgoings—Lease Made after Act—Licensing Act, 1904* (4 Edw. 7, c. 23), s. 3 (3).]—Sect. 3, sub-sect. 3, of the Licensing Act, 1904, provides that "such deductions from rent as are set out in the Second Schedule to this Act may, notwithstanding any agreement to the contrary, be made by any licence-holder who pays a charge under this section, and also by any person from whose rent a deduction is made in respect of the payment of such a charge."

HELD—that the words "notwithstanding any

## II. Renewal of Licences.—Continued.

agreement to the contrary" in the above subsection refer to any agreement made either before or after the passing of the Licensing Act, 1904.

WOOLER v. NORTH-EASTERN BREWERIES, [1910] 1 K. B. 247; 79 L. J. K. B. 138; 101 L. T. 909; 74 J. P. 113; 26 T. L. R. 129—Div. Ct.

7. *Compensation Levy—Tied Houses—Income Tax Deduction—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D.—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 3.*—The compensation levy imposed by sect. 3 of the Licensing Act, 1904, upon a brewery company who are landlords of tied houses is an expense incurred for the purposes of their trade, which may be deducted from the profits of their trade in arriving at the assessable amount of such profits for the purposes of the Income Tax Acts.

Decision of Channell, J. ([1909] 1 K. B. 711; 78 L. J. K. B. 492; 100 L. T. 541; 73 J. P. 244; 25 T. L. R. 353) reversed (Kennedy, L. J., dissenting).

SMITH v. LION BREWERY CO., LD., [1909] 2 K. B. 912; 78 L. J. K. B. 1089; 101 L. T. 145; 73 J. P. 447; 25 T. L. R. 748; 53 Sol. Jo. 696; 16 Manson, 326—C. A.

8. *Interest on Compensation Fund—Income Tax—Liability of Quarter Sessions—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 40, Sched. D—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 24—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 3—Licensing Rules, r. 60.*—Quarter sessions, as the compensation authority under the Licensing Act, 1904, are liable to pay income tax on money standing to the credit of the compensation fund which is earning interest.

GLAMORGAN QUARTER SESSIONS v. WILSON, [1910] 1 K. B. 725; 79 L. J. K. B. 454; 102 L. T. 500; 74 J. P. 299; 26 T. L. R. 351—Bray, J.

9. *Award by Inland Revenue Commissioners—Successful Appeal from Award—Power to Order Commissioners to Pay Costs—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 10 (3)—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 2.*—Where the person interested in licensed premises successfully appeals to the High Court against the amount awarded by the Commissioners of Inland Revenue as compensation, under the Licensing Act, 1904, for the non-renewal of the licence, the Court has a discretion to order the Commissioners to pay the appellant's costs.

Decision of Bray, J. ([1910] W. N. 76; 102 L. T. 284; 26 T. L. R. 350) on this point affirmed; but

HELD—that in this case the judge had not applied the right test, as the mere fact that the appeal had been successful to a substantial extent did not *per se* conclusively show that the Commissioners were liable in costs, and that the case must be remitted back to him to exercise

his discretion afresh upon the matter. [See S. C. (No. 2), *infra*.]

IN RE HARDY'S CROWN BREWERY, LD., [AND ST. PHILIP'S TAVERN, MANCHESTER, 1910] 2 K. B. 257; 79 L. J. K. B. 806; 102 L. T. 799; 74 J. P. 393; 26 T. L. R. 404; 54 Sol. Jo. 457—C. A.

10. *Award by Inland Revenue Commissioners—Successful Appeal from Award—Power to Order Commissioners to Pay Costs—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 10 (3)—Licensing Act, 1904 (4 Edw. 7, c. 23), s. 2.*—Where the parties interested in licensed premises successfully appealed to the High Court against the amount awarded by the Commissioners of Inland Revenue as compensation under the Licensing Act, 1904, for the non-renewal of the licence, Bray, J., being of opinion that in the circumstances of the case the Commissioners had acted unreasonably and that their conduct had led to the appeal, ordered the Commissioners to pay the appellants' costs.

HELD—that there were reasonable grounds on which Bray, J., could so find, and that the Court of Appeal could not interfere with the exercise of his discretion.

Decision of Bray, J. (103 L. T. 308; 74 J. P. 395; 26 T. L. R. 605), affirmed.

*Semble* (per Bray, J.), the duty of the Commissioners is to make reasonable inquiries as to the amount of compensation money payable, and not to fix the amount without giving the parties interested full opportunity of meeting any objection and of doing what can be done to avoid an appeal.

IN RE HARDY'S CROWN BREWERY, LD., AND ST. PHILIP'S TAVERN, MANCHESTER (No. 2), 103 L. T. 520; 27 T. L. R. 25; 55 Sol. Jo. 11—C. A.

See S.C. (No. 1)—C. A., *supra*.

11. *Compensation Fund—Charges Imposed by County Compensation Authority—Constitution of County Borough—Adjustment Between Administrative County and County Borough—Mandamus—Licensing Act, 1904 (4 Edw. 7, c. 23), ss. 3, 8.*—In March, 1907, the licensing justices for the division of C. in the county of G. referred for compensation eight licences from the borough of M., and in August, 1907, the G. Quarter Sessions assessed the compensation. On December 31st, 1907, the G. Quarter Sessions, in accordance with sect. 3 of the Licensing Act, 1904, imposed charges for the year 1908 on all existing on-licences renewed in respect of premises within their area. The borough of M. was constituted a county borough as from April 1st, 1908, by a Provisional Order which provided for an equitable adjustment, by an arbitrator, of the proceeds of the charges so imposed. A separate commission of the peace was granted to the county borough of M. on July 28th, 1908. The said charges were collected by the Commissioners of Inland Revenue in October, 1908, and the portion collected in respect of licences in M. was paid by them to the

## II. Renewal of Licences—Continued.

compensation authority of M. No adjustment as provided for by the Provisional Order had been made. The compensation assessed in 1907 for the eight M. licences was still unpaid.

**HELD**—that whatever the result of the adjustment might be, the G. Quarter Sessions were not entitled to a *mandamus* to compel the Commissioners of Inland Revenue to pay over to them the charges collected in respect of the M. licences, that the eight unpaid licensees were entitled to a *mandamus* to the G. Quarter Sessions to pay their compensation, and that if it was desired to contend that the G. Quarter Sessions had not enough money to pay the compensation, this matter must be raised by a return to the writ or by a special case.

**R. v. COMMISSIONERS OF INLAND REVENUE; [EX PARTE GLAMORGAN COMPENSATION AUTHORITY; R. v. GLAMORGAN COMPENSATION AUTHORITY; EX PARTE DAVIES AND OTHERS, [1910] 1 K. B. 851; 79 L. J. K. B. 497; 102 L. T. 505; 74 J. P. 148—Div. Ct.**

**12. Jurisdiction of Compensation Authority—Renewal of Licence Refused on Ground of Redundancy—Non-payment of Compensation—Right to Further Provisional Renewal—Premises Below Statutory Value—Beerhouse Act, 1840 (3 & 4 Vict. c. 61), s. 1—Licensing Act, 1904 (4 Edw. 7, c. 23), ss. 1, 2—Licensing Rules, 1904, rr. 31, 43.]**—Notice of objection to the renewal of an ante-1869 beerhouse licence was given to the licensee in January, 1909, on the sole ground that the licence was not required. The renewal authority in February, 1909, referred the matter to the compensation authority, and provisionally renewed the licence from April, 1909, to April, 1910. The compensation authority at their principal meeting in June, 1909, refused, solely upon the above ground, to renew the licence, and the parties claiming compensation then filed a claim in which the net annual value of the premises was put at £10 12s. Under the Beerhouse Act, 1840, if the annual value of the premises, situated as the beerhouse in question, is less than £15, the licence is declared void. Ultimately the compensation authority, on the question of value being called to their attention, decided to obtain the decision of the renewal authority as to the value of the premises, and that meantime the consideration of the claim to compensation should stand over. In February, 1910, the compensation money not having been paid and not being likely to be paid before the next 5th day of April, application was made to the renewal authority for a further provisional renewal, and the renewal authority, after hearing evidence, found that the premises were not of the requisite statutory annual value, and that the licence was therefore void, and in consequence they refused to renew the provisional licence.

**HELD**—(1) that the compensation authority had no jurisdiction to consider the question of value, and that they must give notice to the Commissioners of Inland Revenue that the compensation remained to be determined otherwise than by agreement, and (2) that the renewal

authority were bound to grant a further provisional renewal of the licence.

**R. v. WALSALL JUSTICES; R. v. WALSALL [LICENSING JUSTICES, [1910] 2 K. B. 210; 79 L. J. K. B. 834; sub nom. R. v. WALSALL COMPENSATION AUTHORITY; R. v. WALSALL LICENSING JUSTICES, 102 L. T. 737; sub nom. R. v. WALSALL COMPENSATION AUTHORITY, EX PARTE J. & J. YARDLEY & Co., 74 J. P. 220—Div. Ct.**

## III. TRANSFERS AND REMOVALS.

See LANDLORD AND TENANT, No. 20.

## IV. OFFENCES.

### (a) Refusing to Leave Licensed Premises.

[No paragraphs in this vol. of the Digest.]

### (b) Sale by Unlicensed Person.

[No paragraphs in this vol. of the Digest.]

### (c) Sale at Unlicensed Place.

**13. Military Canteen—Licence Issued under Authority of Secretary of State—Sale to a Civilian—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3—Licensing Act, 1902 (2 Edw. 7, c. 28), s. 23.]**—It is not an offence against sect. 3 of the Licensing Act, 1872, for a person who holds an excise licence to sell beer at a military canteen, issued under the authority of the Secretary of State in accordance with sect. 23 of the Licensing Act, 1902, to sell beer to a civilian at the canteen.

**DICKESON & Co. v. MAYES, [1910] 1 K. B. 452; [79 L. J. K. B. 253; 102 L. T. 287; 74 J. P. 139; 26 T. L. R. 236—Div. Ct.**

**14. Licence for House—Sale at Bar at End of Yard—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3.]**—A. was the owner of a house, with a yard and offices at the rear, the whole being enclosed by walls, and he held a licence authorising him to sell spirits, etc., in the house, for consumption on or off the premises. He opened a bar at the end of the yard, having an entrance from a street at the rear of the premises, and sold spirits there.

**HELD**—that the licence authorised a sale in the house alone, and that A. was guilty of the offence of selling spirits at a place where he was not authorised by his licence to sell the same.

**MURNANE v. ADAMS, [1910] 2 I. R. 175—Div. [Ct. Ireland.]**

### (d) Selling or Keeping Open during Prohibited Hours.

**15. Guest of Bonâ Fide Traveller Unlawfully on Licensed Premises during Closing Hours—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 25.]**—V., a bonâ fide traveller, invited the appellant to enter an inn during closing hours as his guest. The appellant, who lived within three miles of the inn, accepted the invitation, and V. thereupon ordered and paid for whisky, some of which was then consumed by him and the appellant. The appellant having been convicted under

## IV. Offences—Continued.

sect. 25 of the Licensing Act, 1872, of being unlawfully on licensed premises during closing hours :

**HELD**, without deciding the broader question as to the right of a *bonâ fide* traveller when in an inn during closing hours to entertain a friend, that the conviction was right, inasmuch as the appellant had gone into the licensed premises merely for the purpose of getting drink under colour of the right of V. as a *bonâ fide* traveller to order and pay for intoxicating liquor.

**JONES v. JONES**, [1910] 2 K. B. 262; 79 L. J. [K. B. 762; 103 L. T. 41; 74 J. P. 317; 26 T. L. R. 497—Div. Ct.

**16. Refreshment House in Wales—Hours of Closing—Day-time on Sunday—Sunday Closing (Wales) Act, 1881—Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 11.**—Sect. 11 of the Licensing Act, 1874, which prohibits the opening of refreshment houses between the hour of the night or morning when licensed houses are required to be closed and four o'clock in the morning, does not prevent an unlicensed refreshment house which is situate in Wales and in which no intoxicating liquors are sold being open between 5 and 6 p.m. on Sunday, as the restrictions imposed by that section do not apply to the day-time, and the Sunday Closing (Wales) Act, 1881, only applies to houses licensed under the Licensing Acts.

**PARKER v. HARRIS**, 100 L. T. 408; 73 J. P. 183; [22 Cox, C. C. 19—Div. Ct.

**17. Bonâ Fide Traveller—One Bonâ Fide Traveller Treating Another—Licensing (Scotland) Act, 1903 (3 Edw. 7, c. 25), s. 60 (1).**—The Licensing (Scotland) Act, 1903 (3 Edw. 7, c. 25), s. 60, enacts: "(1) If the keeper of a licensed inn and hotel sell or give out excisable liquor on Sunday to any traveller, except for the personal use of, and to be drunk by, such traveller within such inn and hotel or on the premises belonging thereto, the keeper of such inn and hotel shall be deemed guilty of a breach of his certificate. . . ."

Two *bonâ fide* travellers travelling together were, on a Sunday, each supplied with a glass of whisky. One of them paid for both the glasses of whisky. The hotel keeper was charged with an offence in having sold and given out to the one traveller whisky "not for the personal use of and to be drunk by" him.

**HELD**—that as both were *bonâ fide* travellers, no offence had been committed within the meaning of the Act.

**CLYDE v. DAVIDSON**, [1910] S. C. (J.) 11; 47 [Sc. L. R. 167; 6 Adam, 187—Ct. of Justy.

## (e) Miscellaneous Offences.

**18. Permitting Drunkenness—Private Guests found Drunk after Closing Hours—Licensing Acts, 1872 (35 & 36 Vict. c. 94), s. 13, and 1902 (2 Edw. 7, c. 28), s. 4.**—The respondent, the proprietor of a licensed hotel, was charged with permitting drunkenness on the licensed premises. The respondent's wife entertained as private

guests on the licensed premises a number of persons after closing hours, and two of these guests, M. and W., were drunk at the time the police visited the premises at 1 a.m. M., before becoming a private guest, had been on the premises as an ordinary customer, but was not then drunk. W. came on to the premises just before closing time and was then drunk.

**HELD**—that the respondent ought to have been convicted.

**LAWSON v. EDMINSON**, [1908] 2 K. B. 952; 78 [L. J. K. B. 36; 99 L. T. 797; 72 J. P. 479; 25 T. L. R. 11; 53 Sol. Jo. 15; 21 Cox, C. C. 734—Div. Ct.

**19. Betting—Gaming—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 17 (1).**—Betting on horse races does not come within the meaning of the term "gaming" in sect. 17 (1) of the Licensing Act, 1872.

**KEEP v. STEVENS**, 100 L. T. 491; 73 J. P. 112; [22 Cox, C. C. 59—Div. Ct.

## V. SALE TO CHILDREN.

(No paragraphs in this vol. of the Digest.)

## VI. HABITUAL DRUNKARDS.

**20. Disorderly Behaviour while Drunk—Three Previous Convictions Involving Drunkenness—No Power to Order Imprisonment in Addition to Detention in Inebriate Reformatory—Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 2 (1).**—When a prisoner is convicted upon indictment under sect. 2 (1) of the Inebriates Act, 1898, of an offence mentioned in Sched. I. thereto, and also of three previous convictions for similar offences, and of being an "habitual drunkard," he cannot be sentenced to imprisonment in addition to detention in an inebriate reformatory.

**R. v. BRIGGS**, [1909] 1 K. B. 381; 78 L. J. K. B. [116; 100 L. T. 240; 73 J. P. 31; 25 T. L. R. 105; 53 Sol. Jo. 164; 21 Cox, C. C. 762—C. C. A.

**21. "Habitual Drunkard"—Meaning of Term—Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), s. 3.**—The definition of "habitual drunkard" in sect. 3 of the Habitual Drunkards Act, 1879, as "a person who, not being amenable to any jurisdiction in lunacy, is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor at times dangerous to himself or herself, or to others, or incapable of managing himself or herself, and his or her affairs," includes a person who by habitual drinking is habitually not in a fit condition to manage himself or his affairs, although in the intervals between his drinking bouts he may not be incapable of doing so, and is not confined to the case of a person who, as the result of drinking, is incapable of doing so even when sober.

**EATON v. BEST**, [1909] 1 K. B. 632; 78 L. J. [K. B. 425; 100 L. T. 494; 73 J. P. 113; 25 T. L. R. 244; 22 Cox, C. C. 66—Div. Ct.

## VII. MISCELLANEOUS.

(No paragraphs in this vol. of the Digest.)



**INVENTIONS.**

*See* PATENTS AND INVENTIONS.

**IRISH LAW.**

*See* WILLS, No. 21.

**ISLE OF MAN.**

*See* DEPENDENCIES AND COLONIES.

**JAMAICA.**

*See* DEPENDENCIES AND COLONIES.

**JOINT STOCK COMPANIES.**

*See* COMPANIES.

**JOINT TENANCY AND  
TENANCY IN COMMON.**

*See* LANDLORD AND TENANT; PERSONAL PROPERTY; REAL PROPERTY AND CHATELS REAL; WILLS, Nos. 14, 16.

**JOINTURES.**

*See* HUSBAND AND WIFE; REAL AND PERSONAL PROPERTY; RENT-CHARGES, I.; SETTLEMENTS.

**JUDGES.**

[No paragraphs in this vol. of the Digest.]

**JUDGMENT.**

*See* BANKRUPTCY, No. 3; CHOSSES IN ACTION, No. 2; ESTOPPEL; MISREPRESENTATION AND FRAUD; PRACTICE, XII., and No. 37.

**JUDGMENT SUMMONS.**

*See* COUNTY COURTS.

**JUDICIAL COMMITTEE.**

*See* COURTS.

**JUDICIAL SEPARATION.**

*See* HUSBAND AND WIFE.

**JURIES.**

*See also* COUNTY COURTS, Nos. 1, 5; PRACTICE, X. (d).

1. *Bias of Juror—Interest.*]—A tramway company were defendants in an action of negligence. A shareholder and director in the firm of C. & Co., Ltd., agents for the insurers of the defendants, for the purpose of investigating all claims made against the defendant company, was a member of the jury which tried the action. This juror had no knowledge that such a case was pending, and he took no part whatever in the conduct of the action or in the investigation of the claim made by the plaintiff.

**HELD**—that the jury was not improperly constituted; and that there were no circumstances in the case which would justify the Court in setting aside the verdict on the ground of the misconduct or bias of a juror.

*Williams v. Great Western Ry. Co.* ((1858) 3 H. & N. 869) followed.

Decision of Div. Ct. reversed.

**DIGNAM v. DUBLIN UNITED TRAMWAYS CO.**, [44 I. L. T. 185—C. A., Ireland.

*See also* CRIMINAL LAW AND PROCEDURE; MAGISTRATES; PRACTICE.

**JURISDICTION.**

*See* ACTION; CONFLICT OF LAWS; COUNTY COURTS; COURTS; MAGISTRATES, ETC.

**JUSTICE OF THE PEACE.**

*See* MAGISTRATES.

**JUVENILE OFFENDERS.**

*See* CRIMINAL LAW AND PROCEDURE.

**LACHES.**

*See* EQUITY; LIMITATION OF ACTIONS; WAIVER.

## LANCASTER PALATINE COURT.

*See* COURTS.

## LAND.

*See* REAL PROPERTY AND CHATTELS  
REAL; SALE OF LAND, ETC.

## LAND AGENTS.

*See* AGENCY; SALE OF LAND; VALUERS  
AND APPRAISERS.

## LAND CHARGES.

*See* REAL PROPERTY AND CHATTELS  
REAL; SALE OF LAND.

## LAND CLAUSES CONSOLIDATION ACTS.

*See* COMPULSORY PURCHASE AND COM-  
PENSATION.

## LAND DRAINAGE ACTS.

*See* SEWERS AND DRAINS.

## LAND IMPROVEMENT.

1. *Land Improvement Company—Rent Charges—Mortgages—Priority—Special Act.*]—The plaintiff company, which was incorporated by a special Act of Parliament, entered into a provisional contract in 1905 with the owners of certain land to execute improvements on the land, the expense of which was to be charged upon the estate. The improvements were duly sanctioned by a provisional order of the Board of Agriculture, and by an absolute order dated October 30th, 1906, it was declared that the inheritance of the land in question was charged with the sum of £1,080 paid for the improvements, and to be satisfied by a rentcharge of £52 issuing out of the land for forty years.

**Held** (1), that the plaintiffs were under no obligation to investigate or inquire into the title of the land on which the improvements were executed; and (2), that the plaintiffs had by sects. 62 and 64 of their Act priority in respect of their charge over mortgages created

by the landowners before the date of the plaintiffs' charge.

GENERAL LAND DRAINAGE AND IMPROVE-  
MENT Co. v. UNITED COUNTIES BANK LD.,  
[1910] W. N. 187; 103 L. T. 418; 26 T. L. R.  
619—Joyce, J.

## LAND REGISTRY.

*See* SALE OF LAND; REAL PROPERTY  
AND CHATTELS REAL.

## LAND TAX.

[No paragraphs in this vol. of the Digest.]

## LAND TRANSFER.

*See* REAL PROPERTY AND CHATTELS  
REAL; SALE OF LAND.

## LANDLORD AND TENANT.

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*See also* AGRICULTURE, I.; BANKRUPTCY, No. 28; BILLS OF SALE, No. 1; COUNTY COURTS, No. 4; DEEDS, No. 1; DISTRESS; ESTOPPEL, No. 2; GAME, No. 4; MORTGAGE; PRACTICE, Nos. 4, 5; WATERS AND WATERCOURSES, No. 1.

**I. RELATION OF LANDLORD AND TENANT.**

*See* No. 6, *infra*.

**1. Affixing of Election Poster on Premises by Tenant—Right of Landlord to Remove Poster—No Breach of Covenant.**—Under a lease the landlord had only a right of re-entry upon the non-performance of the covenants by the tenant or on non-payment of rent. The tenant committed no breach of covenant, but during the tenancy he affixed on the premises an election poster, which was removed by the landlord, who maintained that he had a right to do so. In an action by the tenant against the landlord for damages for trespass and for an injunction:—

**HELD**—that the landlord had no right to enter upon the premises except in the event of non-payment of rent or breach of covenant, and

that the tenant was therefore entitled to a declaration to that effect and to damages for the trespass.

*YELLOLY v. MORLEY*, 27 T. L. R. 20—Div. Ct.

**II. AGREEMENTS FOR LEASES.**

*See* COUNTY COURTS, No. 4.

**III. ESSENTIALS OF LEASE.**

[No paragraphs in this vol. of the Digest.]

**IV. PARCELS OR PREMISES INCLUDED IN THE DEMISE.**

*See* WATERS AND WATERCOURSES, No. 1.

**(a) Easements.**

[No paragraphs in this vol. of the Digest.]

**(b) Fixtures.**

[No paragraphs in this vol. of the Digest.]

**(c) Sporting Rights.**

**2. Lease of Farm Subject to Use as Golf Course—Right of Golf Club to Keep Course Clear from Material Obstruction to Play.**—The plaintiff was the lessee of a farm subject to a reservation in favour of a golf club in accordance with the terms of a lease to the club of a club house on the farm land. By their lease the golf club was entitled to keep a playing course not exceeding fifty yards in width clear from fern, long grass, or other material obstruction to the play.

**HELD**—that “long grass” in the lease to the golf club meant long grass from the point of view of the golfer, and a material obstruction to the game; and that the golf club in cutting the grass with a mowing machine to the length of half an inch or three quarters of an inch had done no more than was reasonably necessary for the maintenance of the course.

*WOODWARD v. HEYWOOD*, 27 T. L. R. 123—[Div. Ct.]

**V. DURATION OF TENANCY.**

*See also* No. 25, *infra*.

**(a) Notice to Terminate.**

**3. Tenant Entitled to Give Notice in Certain Contingency—Notice Improperly Given by Tenant—Breach of Tenancy Agreement—Landlord Advertising House for Sale with Vacant Possession.**—By an agreement of tenancy the defendant, who was a lieutenant engineer in the Royal Navy, took from the plaintiff a house at Portsmouth for three years and one half-quarter from May 9th, 1907. The agreement contained the following terms:—“It is further agreed between the parties that should the said tenant be ordered away from Portsmouth by the Admiralty he may determine this agreement on giving to the landlord one quarter’s notice in writing to expire on any of the usual quarter days.” In February, 1908, the defendant was appointed to H.M.S. *Ocean*, which was ordered to the Mediterranean, but in consequence of his wife’s health he was anxious not to go abroad, and eventually the Admiralty gave him the

### V. Duration of Tenancy—Continued.

option of accepting the appointment or being put on half-pay. The defendant accepted the latter alternative, and on March 14th, 1908, he was put on half-pay. On March 25th, 1908, he gave notice to the plaintiff of his intention to give up possession of the house on June 24th then next. He vacated the house on that date, and thereafter the plaintiff, then believing the notice to be a proper and valid notice, endeavoured to sell the house by auction, advertising it for sale with vacant possession; but as no sale resulted, the plaintiff sued the defendant for the amount of two quarters' rent, contending that the defendant was not entitled to give the notice he had given.

HELD—that as at the time when the defendant gave the notice he was not under orders to leave Portsmouth within the meaning of the agreement he was not entitled to give the notice; that such notice was therefore invalid; that the act of the landlord constituted an acceptance of the surrender by the tenant and put an end to the tenancy as an existing tenancy; but that as what the defendant did amounted to a breach of the agreement, the plaintiff was entitled to recover the amount of damage suffered thereby—namely, the equivalent of two quarters' rent.

GRAY v. OWEN, [1910] 1 K. B. 622; 79 L. J. [K. B. 389; 102 L. T. 187; 26 T. L. R. 297—Div. Ct.]

4. *Determinable Head-Lease—Sub-Lease for Fixed Term.*—If a lessee for a term of twenty-one years, determinable at his option by notice at the end of seven or fourteen years, sub-lets the demised premises for a fixed term exceeding fourteen years, he ceases to be entitled to give a valid notice determining his own lease.

PHIPOS v. CALLEGARI AND OTHERS, 54 Sol. Jo. [635—Warrington, J.]

See S. C. under VII., *infra*.

#### (b) Renewal.

See DEPENDENCIES, No. 24.

#### (c) Tenancy at Will.

See also PRACTICE, No. 4.

5. *Death of Tenant Intestate—Administratrix Accepted as New Tenant—Property of Intestate—Valuation—Intestates Estates Act, 1890* (53 & 54 Vict. c. 29), s. 5.]—Various encroachments were made from time to time on the waste of the manor of A. The lord of the manor made it a rule to allow the persons encroaching to remain in possession and to obtain from them an acknowledgment that they held the land only as tenants at will at a small rent. Any tenant might purchase the freehold at a price calculated as if for the enfranchisement of copyhold. On the death or removal of a tenant the lord accepted as the new tenant the person whom on general equitable grounds he considered to have the best claim, and the new tenant signed the same acknowledgment as before. M., one of these tenants, died intestate, and his widow took out administration of his estate. In her affidavit

for the Inland Revenue she valued the land as if it were copyhold, deducting the sum that would be required by the lord for the sale of the freehold. Subsequently she was accepted as tenant by the lord on the usual terms, and now claimed that the holding was her own property and not part of her husband's estate.

HELD—that the property in question was part of the intestate's estate and that there should be an inquiry as to its value, regard being had to sect. 5 of the Intestates Estates Act, 1890.

IN RE MANSER, KILICK v. MANSER, [1910] [W. N. 61—Neville, J.]

#### (d) Tenancy from Year to Year.

[No paragraphs in this vol. of the Digest.]

#### (e) Weekly Tenancy.

[No paragraphs in this vol. of the Digest.]

#### (f) Life Tenancy.

[No paragraphs in this vol. of the Digest.]

### VI. RENT.

See also ESTOPPEL, No. 2.

6. "*Landlord*"—*Receiver—Execution—Landlord and Tenant Act, 1709* (8 Anne, c. 18 (c. 14 in *Ruffhead*)), s. 1.]—A brewery company granted an underlease of a public-house in 1896, and on the same day the underlessee mortgaged his leasehold interest to the plaintiff, and gave a second mortgage to the company. In 1901 the underlessee became bankrupt, and the defendant was appointed his trustee in bankruptcy. In 1902 the company, as second mortgagees, went into possession, and thereafter let the public-house, with the fixtures, from year to year at the yearly rent of £150 for the premises, and the additional yearly sum of £1,250 in lieu of premium for the goodwill of the business and for the use of the fixtures and fittings. In 1907 the company obtained judgment against the tenant for £964, and in February, 1909, the tenancy was determined at a month's notice. On March 9th, 1909, foreclosure proceedings were commenced by the plaintiff, and on March 12th a receiver and manager was appointed, and the company was directed to give up possession of the premises so far as was necessary for the purposes of the receivership. On the same day the sheriff levied execution in respect of the judgment obtained by the company in 1907 against their tenant, and on April 8th the sheriff sold the goods seized to the receiver for £700.

HELD—that at the date of the execution the receiver was the "landlord" of the premises within sect. 1 of the Landlord and Tenant Act, 1709, so as to be entitled to be paid the arrears of rent due at the time of the execution, and that, looking at the substance of the transaction, the rent was £150 a year, and that for this purpose the £1,250 could not be taken into account.

COX v. HARPER, [1910] 1 Ch. 480; 79 L. J. Ch [78; 101 L. T. 669; 26 T. L. R. 105—Joyce, J.]

On appeal by the receiver on the question as to the amount of rent:—

HELD—that the tenancy agreement drew a clear distinction between the rent and the addi-



## VI. Rent—Continued.

tional yearly sum payable for the goodwill, etc., and that the latter sum was not rent within the meaning of the section. Decision of Joyce, J. (*supra*), affirmed. [1910] 1 Ch. 480; 79 L. J. Ch. 307; 102 L. T. 438; 26 T. L. R. 264; 54 Sol. Jo. 305—C. A.

7. *Re-entry for Non-payment of Rent—Recovery of Possession of Premises—Half-year's Rent in Arrear*—"No Sufficient Distress Found on Premises"—*Proof of Sufficiency of Distress—Assignment by Lessor—Right of Assignee to Maintain Action for Recovery of Possession—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 139—*Conveyancing and Law of Property Act, 1881* (44 & 45 Vict. c. 41), s. 10.]—Sect. 139 of the County Courts Act, 1888, provides that when the rent of any premises does not exceed £100 a year and is in arrear for half a year and the landlord has the right by law to re-enter for non-payment thereof, he may enter a plaint in the county court for the recovery of the premises, and thereupon a summons shall issue to the tenant, and, if the tenant shall not show good cause why the premises should not be recovered, then upon proof, amongst other facts, that one half-year's rent was in arrear before the plaint was entered and that no sufficient distress was then to be found on the premises to countervail such arrear, the judge may order possession of the premises mentioned in the plaint to be given to the plaintiff.

In an action to recover possession of certain premises under the above section:—

HELD—that for the purpose of proving that "no sufficient distress was then to be found on the premises" it is not necessary that a distress for the half-year's rent due should be actually levied, but the fact of the insufficiency of distress may be proved by other evidence.

HELD ALSO—that, where the half-year's rent accrued partly before and partly after the reversion of the premises was assigned, the assignee was entitled by virtue of sect. 10 of the Conveyancing and Law of Property Act, 1881, to maintain an action under the above section to recover possession for non-payment of the half-year's rent.

RICKETT v. GREEN, [1910] 1 K. B. 253; 79 [L. J. K. B. 193; 102 L. T. 16—Div. Ct.]

8. *Assignment of Part of Demised Premises—Apportionment of Rent—Value at Date of Severance*.]—In apportioning the amount of rent due from the assignee of part of demised premises, the proportionate value of the assigned part must be calculated as at the date of the severance of the term and not as at the date of the original lease.

SALTS v. BATTERSBY, [1910] 2 K. B. 155; 79 [L. J. K. B. 937; 102 L. T. 730—Div. Ct.]

## VII. RESTRICTIVE COVENANTS.

9. *Lease of Farm—Covenant not to Plough up Pasture Land*.]—A covenant not to plough up pasture land refers solely to land which is pasture land at the date of the agreement, and

does not refer to land which the tenant subsequently leaves for a considerable period in grass.

An act which would not otherwise be a breach of covenant by a tenant cannot be converted into a breach by the landlord serving him with notice to quit.

RUSH v. LUCAS, [1910] 1 Ch. 437; 79 L. J. Ch. [172; 101 L. T. 851; 54 Sol. Jo. 200—Eve, J. See S. C. under AGRICULTURE, No. 1.]

10. *Determinable Head-Lease—Sub-Lease for a Fixed Term—Determination of Head-Lease—New Lease of Part—Breach by New Lessee—Constructive Notice*.]—If a lessee for a term of twenty-one years, determinable, at his option, by notice at the end of seven or fourteen years, sublets the demised premises for a fixed term exceeding fourteen years, he ceases to be entitled to give a valid notice determining his own lease. Therefore, where the underlease contains a restrictive covenant binding upon the under-lessee, and a notice purporting to determine the head-lease is given and, in addition, a surrender of the superior term is executed, the original lessor derives his title during the term through the underlessee and is bound by the covenant.

In such a case, where the underlease was of the upper floors of the demised premises only, and between the dates of the notice and the surrender the original lessor let the ground floor and basement for use as a restaurant, to which use the underlessee had covenanted that he would not put the premises retained by him:—

HELD—that the restaurant-keeper, as well as his lessor, was bound by the covenant of which he had constructive notice, because he knew that the entrance to the upper floors was through the ground floor, and having notice of rights over the premises demised to him, he should have inquired their nature and source, and if this had been done he would have learnt of the sub-lease and so have acquired notice of its contents.

PHIPOS v. CALLEGARI AND OTHERS, 54 Sol. Jo. [635—Warrington, J.]

11. *Dangerous Trade—Premises Incapable of Insurance against Fire—Injunction*.]—On September 14th, 1905, C. let premises to M., who covenanted not to carry on or permit upon the said premises any trade or occupation or do or suffer any other thing which might render any increased or extra premium payable for the insurance of the premises against fire, or which might make void or voidable any policy for such insurance. The premises were insured with the B. C. A. Company. They were burnt down and rebuilt. On July 13th, 1910, that office declined to renew the insurance. The N. Assurance inspected the premises, and found they were occupied by linen waterproofer's, who manipulated highly inflammable materials, and they refused to insure the premises. C. asked for an injunction restraining M. from permitting or suffering the waterproofing company to carry on upon the demised premises any trade or occupation, or doing or suffering any other thing, which might render any increased or extra premium payable for the insurance of the premises against fire, or which might make void or voidable any policy for such insurance.

### VII. Restrictive Covenants—Continued.

HELD—that an injunction must be granted as asked, and that the immediate removal of the inflammable substance must be directed.

CHAPMAN v. MASON AND LINILINE CO., 103 [L. T. 390—Eady, J.]

### VIII. RATES, TAXES AND OUTGOINGS.

See also No. 20, *infra*.

#### (a) Charges borne by Lessor.

12. *Covenant by Lessor to Pay Rates*—"Now Payable or hereafter to become Payable"—*Premises Sub-let at a Profit—Increased Assessment—Liability of Lessor.*—In 1899, four floors of a building were let on lease, the lessor covenanting to pay all rates, etc., "now payable or hereafter to become payable" in respect of the premises except inhabited house duty. At that date the whole building was assessed to rates in one sum. The lessee sub-let, at a profit, the four floors to different tenants. At the quinquennial valuation in 1905, each floor was assessed separately, and in consequence of the profit rentals, the total assessment for the whole building was considerably increased. The trustees of the lessor's will now contended that they were not liable for the increase in rates attributable to the profit rentals paid to the lessee.

HELD—that the covenant in the lease extended to the increased rates payable in respect of the premises, and that the landlord was liable for them.

Watson v. Home ((1827) 7 B. & C. 285), Smith v. Humble ((1854) 15 C. B. 321), and Mansfield v. Relf ([1908] 1 K. B. 71—C. A.) distinguished.

Decision of Neville, J. ([1909] 2 Ch. 64; 78 L. J. Ch. 536; 100 L. T. 729), affirmed.

SALAMAN v. HOLFORD, [1909] 2 Ch. 602; 79 [L. J. Ch. 41; 101 L. T. 505—C. A.]

13. *Contract by Landlord to Pay Rates—Breach—Distress—Imprisonment of Tenant—Damages—Remoteness.*—The owner of a house in London let to a weekly tenant on the terms of the landlord paying rates and taxes. A distress warrant was issued against the tenant in respect of an overdue instalment of a general rate and costs, and, on a return of *nulla bona* being made to the warrant, a warrant for commitment was issued against him. In an action by the tenant for damages against the landlord for imprisonment consequent on the landlord's breach of his contract to pay the rates:—

HELD—that the defendant was liable for damages in respect of the imprisonment.

Decision of Div. Ct. reversed.

ATKINS v. HUTTON, 103 L. T. 514; 74 J. P. 329; [8 L. G. R. 513—C. A.]

See S. C. under RATES, V. (d).

#### (b) Factories and Workshops.

[No paragraphs in this vol. of the Digest.]

#### (c) Paving Expenses.

[No paragraphs in this vol. of the Digest.]

#### (d) Requirements of Sanitary Authority.

[No paragraphs in this vol. of the Digest.]

### IX. REPAIRS, MAINTENANCE AND IMPROVEMENT.

#### (a) Alteration.

[No paragraphs in this vol. of the Digest.]

#### (b) Building Covenants.

[No paragraphs in this vol. of the Digest.]

#### (c) Insurance Covenants.

[No paragraphs in this vol. of the Digest.]

#### (d) Liability of Landlord for Non-repair.

See NEGLIGENCE, Nos. 3, 11; WATERS AND WATERCOURSES, No. 1.

#### (e) Repairing Covenants.

14. *Underground Station—Support of Superstructure—Measure of Obligation—Safety—Original Condition.*—A railway company covenanted as lessees to keep in repair the retaining and other walls, piers, pillars, supports, and roof of an underground station, on the roof of which was a superstructure.

HELD—that the obligation on the company under the covenant was to be measured, not by the safety of the superstructure, but by the condition of the premises at the date of the demise. IN RE LONDON CORPORATION, LONDON CORPORATION v. GREAT WESTERN AND METROPOLITAN RYS., [1910] 2 Ch. 314; 79 L. J. Ch. 622; 103 L. T. 20; 54 Sol. Jo. 562—Eve, J.

15. *Covenant to Repair—Breach—Damages Recovered against Lessee—Claim by Lessee against Sub-lessee.*—The plaintiff was the lessee of seven houses, two of which he sublet to the defendant. The covenant to repair in the sub-lease was in the same terms as in the head lease; in both leases a three months' notice to repair was provided for, which if not complied with worked a forfeiture. There was no covenant in the sub-lease of indemnity against the covenants in the head lease, nor was there any covenant to perform the covenants in the head lease. Notice to repair the premises having been given by the head landlord to the plaintiff, the latter served a similar notice to repair upon the defendant. These notices were not complied with, and the head landlord brought an action against the plaintiff to recover the whole of the premises. In that action the defendant obtained leave to appear and defend. Thereafter the plaintiff obtained an order, to which the defendant was not a party, for relief against forfeiture on payment of an amount for rent and on payment of costs as between solicitor and client, without prejudice to any claim he might have against the defendant. The plaintiff thereupon sued the defendant to recover those costs and also certain costs he had paid to his solicitor.

HELD—that there being no covenant of indemnity by the defendant or an express covenant by him to perform all the covenants and conditions of the head lease, the costs in

## IX. Repairs, Maintenance, and Improvement— *Continued.*

question were not recoverable from the defendant.

Dictum of Lindley, L.J., in *Ebbetts v. Conquest* ([1895] 2 Ch. 377) followed.

CLARE v. DOBSON, [1911] 1 K. B. 35; [1910] [W. N. 227; 103 L. T. 506; 27 T. L. R. 22—Lord Coleridge, J.

## X. COVENANTS BY LESSOR.

### (a) Restrictive Covenants.

See No. 10, *supra*.

### (b) Quiet Enjoyment.

See No. 19, *infra*.

## XI. DEROGATION FROM GRANT.

See No. 4, *supra*; No. 19, *infra*.

## XII. FORFEITURE.

See also No. 24, *infra*.

### (a) Notice of Breach of Covenant.

16. *Compulsory Lease of Allotment Land—Covenants to Keep Land Clean—Notice to Remedy Breaches—Reasonable Time—Claim to Re-enter—Pleading—Condition Precedent—R. S. C., Ord. 19, r. 14—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14(1).*—A compulsory lease of allotment land contained covenants by the lessee, a local authority, to keep the land clean and in good heart and condition. In June, 1909, the lessor served the local authority with a notice under sect. 14 (1) of the Conveyancing and Law of Property Act, 1881, directed to the whole of the land, and alleging, generally, breaches of the said covenants, and requiring the same to be remedied within a reasonable time, and in the following November he issued a writ alleging that the breaches had not been remedied, and claiming to re-enter. The local authority denied the breaches. At the trial of the action the lessor's evidence showed that all the allotments were in a bad condition when the notice was given, that some of them were clean at the date of the writ, but that it would take at least a year from the date of the notice to put the whole of the land in good condition. On this the local authority objected that a reasonable time had not been allowed to remedy the breaches.

HELD—that as the notice was in general terms and directed to the whole of the land it was not divisible, and that, as a sufficient time had not been allowed to remedy all the breaches, the action was premature and must be dismissed.

HELD ALSO—that the objection that a reasonable time had not been allowed was not an allegation in the nature of a condition precedent within the meaning of Ord. 19, r. 14, and one which ought as such to have been pleaded by the local authority in their statement of defence. HOPEY v. PARISH COUNCIL OF TARVIN IN THE COUNTY OF CHESTER, 74 J. P. 209—Neville, J.

### (b) Re-entry.

See Nos. 7, 16, *supra*.

### (c) Relief against Forfeiture.

See also No. 16, *supra*.

17. *Writ Claiming Possession—Election by Landlord—Underlease—Relief Granted to Lessee—Determination of Lease—Effect on Underlease—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14.*—The effect of the order giving relief against forfeiture for a breach of covenant to repair is to continue the original lease for all purposes, so that an underlessee continues liable on the covenants in his derivative lease notwithstanding the issue of the writ to recover possession by the superior landlord.

Decision of Darling, J. ([1909] 2 K. B. 894) affirmed.

DENDY v. EVANS, [1910] 1 K. B. 263; 79 [L. J. K. B. 121; 102 L. T. 4; 54 Sol. Jo. 151—C. A.

18. *Covenant not to Assign or Underlet without Consent—Assignment without Consent to Trustees for Debenture-holders—Sub-Demise by Way of Mortgage—Forfeiture—Waiver—Acceptance of Rent by Agent—Relief—Negligence—Conveyancing and Law of Property Acts, 1881 (44 & 45 Vict. c. 41), s. 14, and 1892 (55 & 56 Vict. c. 13), s. 4.*—L. C. & Co., who were assignees of a lease containing the usual covenants not to assign or underlet without the consent of the lessor, assigned the premises to trustees for debenture-holders by sub-demise, no notice being given to the lessor, and no assent being obtained from him to the sub-demise. The lessor's agent received rent from the new tenants, the trustees. A debenture-holder's action having been taken against L. C. & Co. and a receiver appointed, the lessor threatened to re-enter and determine the lease by reason of the failure to obtain his consent to the sub-demise. The trustees for the debenture-holders contended that there had been a waiver of the lessor's right of forfeiture, and also sought for relief under the Conveyancing Act, 1881, sect. 14, and the Act of 1892, sect. 4.

HELD—that there was no waiver, as there was not sufficient evidence to show that the lessor had become aware of the assignment, and that, as the trustees had taken over the lease without investigating its terms, and without considering whether the assignment would or would not cause a forfeiture, the Court could not grant them the relief they sought.

MATTHEWS v. SMALLWOOD, [1910] 1 Ch. 777; [79 L. J. Ch. 322; 102 L. T. 228—Parker, J.

## XIII. DWELLING HOUSES AND FLATS.

See also No. 1, *supra*; CONTRACT, No. 7; METROPOLIS, No. 21; NEGLIGENCE, No. 3.

19. *Tenancy of Flat—Erection of Staircase in Front of Lessee's Windows—Meaning of "Demised Premises"—Nuisance—Quiet Enjoyment—Light and Air—Privacy—Easement—*

**XIII. Dwelling Houses and Flats—Continued.**

*Grantor Derogating from Own Grant—Interference with Lessee's Rights.*—The plaintiffs, who were tenants of a ground floor flat, complained that the tenant of the flat overhead had erected a staircase, leading from the garden to her flat, and had thereby broken a covenant in her agreement not to do or suffer anything on the premises demised to her which might be a nuisance to the landlord or the other tenants. They further pleaded that the lessor, by giving licence for such erection, had broken her covenant with the plaintiffs for quiet enjoyment, and that, by allowing the plaintiffs' comfort and privacy to be interfered with, she had derogated from her own grant.

**HELD**—that the first floor tenant had not erected the staircase on the demised premises within the meaning of the covenant against creating a nuisance, and that, inasmuch as the staircase had not rendered the plaintiffs' premises materially less fit for the purpose for which they were demised, there was no derogation from the lessor's grant.

**HELD FURTHER**—that to constitute a breach of covenant for quiet enjoyment there must be some physical and substantial interference with the plaintiffs' occupation, to which a mere annoyance, such as lessening of privacy, will not amount.

BROWNE v. FLOWER, [1910] W. N. 261; 103 [L. T. 557; 55 Sol. Jo. 108—Parker, J.]

**XIV. LICENSED PREMISES.**

See also **INTOXICATING LIQUORS**, No. 5; **RATES**, No. 5.

**(a) Covenants against Forfeiture of Licence.**

[No paragraphs in this vol. of the Digest.]

**(b) Maintenance of Business and Licence.**

**20. Licence Duty—Covenant—Sum Deposited with Landlords as Security for Performance of Covenants—"Outgoings"—New Licence Duty.**—In 1907 the plaintiff became tenant to the defendants of a public-house, and he covenanted to pay "all taxes, rates, assessments, and outgoings whatsoever now or hereafter to be taxed, rated, or assessed on the premises or on the landlords or tenant in respect thereof." He deposited a sum of money with the defendants as security for the due performance of his covenants, and this sum was to be retained by them until the plaintiff should have transferred the licence to their nominee. The licence was transferred to new tenants in July, 1910, and the plaintiff thereupon demanded the return of his deposit; but the defendants claimed to retain it, under the plaintiff's covenant, to meet the new licence duty imposed by the Finance (1909-10) Act, 1910, which was chargeable on any licence granted after July 1, 1909, but the amount of which had not yet been decided by the Inland Revenue Commissioners.

**HELD**—that the new duty was an "outgoing" within the plaintiff's covenant, and that the

defendants were entitled to retain the deposit to meet such duty.

WAUER v. HOARE & CO., LD., 27 T. L. R. 16—[Lawrance, J.]

**(c) Tied Houses.**

See also **AGENCY**, No. 12.

**21. Covenant by Tenant to Purchase all Beer from Landlord—Price of Beer Raised by Landlord and Other Brewers—Refusal of Tenant to Purchase at Increased Price—"Current Market Prices"—Injunction—Form of Order.**—By a lease of a public-house the tenant covenanted to purchase all beer for the demised premises from the landlords, a brewery company. In consequence of the proposed licensing clauses in the Finance Bill, 1909, the landlords, and practically the whole of the other brewers in London, agreed that all beer sold by them within the metropolitan area should be raised by 6s. a barrel, and that no beer should be sold by them at any lower price. Due notice of this agreement was given to the tenant, but he refused to buy any beer from the landlords at the increased price, and threatened to buy beer elsewhere.

**HELD**—that as it could not be said that the landlords were not entitled, if they could, to raise the price of their beer so as to cover the increased burden which was contemplated by the Finance Bill, and that as the increase in the price charged by them was not unreasonable in amount, the landlords were entitled to an injunction restraining the tenant, so long as they were ready and willing to supply him with beer of reasonably good quality and at reasonable prices, from selling beer on the demised premises other than that purchased from the landlords.

*Quære* whether where there is a positive covenant on the part of a landlord to supply beer at "current market prices," he is entitled to charge an extra price to the tenant of a tied house merely because that house is tied.

Observations on the form of order in *Catt v. Tourle* ((1869) 4 Ch. App. 654), and in *Seton on Judgments*, 6th ed., vol. i., p. 534.

COURAGE & CO., LD. v. CARPENTER, [1910] 1 Ch. 262; 79 L. J. Ch. 184; 101 L. T. 940; 26 T. L. R. 193—Neville, J.]

**22. Covenant by Tenant to Purchase all Beer from Landlord—Price of Beer raised by Landlord—Implied Covenant to Supply Beer at Reasonable Prices—Reasonable Increase.**—N. was the licensee of a tied house, being the assignee of leases granted by the plaintiffs, a firm of brewers, and bound by covenants therein not to sell beer, etc., on the premises not purchased from the plaintiffs. In 1900 the tax on beer was increased by 1s. a barrel. Thereupon the plaintiffs, in common with many other brewers, gave notice to N. that they would increase their price for beer by 1s. a barrel. N., having for some time paid the increased price, refused to do so. The price of beer with the 1s. added was then less than when the lease was originally granted.

**HELD**—that, assuming that there was in the lease an implied covenant to supply beer at



#### XIV. Licensed Premises—*Continued.*

reasonable prices, such a covenant did not bind the plaintiffs to supply beer at the lowest possible market prices, and that the increase of 1s. was reasonable.

NOAKES & Co., LD. v. DAY (1907), [1910] 1 Ch. 270 (n.); 79 L. J. Ch. 186 (n.)—C. A.

#### XV. COVENANTS AGAINST ASSIGNING OR UNDERLETTING.

23. *Licence to Assign—Unreasonable Condition—Declaratory Judgment—Practice—Costs.*—A lessee covenanted not to assign without the licence of the lessors, such licence "not to be unreasonably withheld." He asked for a licence to assign to his wife. The lessors refused except upon condition that he himself covenanted to pay the rent and perform the covenants of the lease. Upon summons by the lessee for a declaration that he was entitled to assign without the consent of the lessors:—

HELD—that the condition was unreasonable, and that the lessee was therefore entitled to the declaration asked, but without costs.

EVANS v. LEVY, [1910] 1 Ch. 452; 79 L. J. Ch. [883; 102 L. T. 128—Eve, J.

24. *Covenant Not to Assign without Consent—"Respectable and Responsible Person"—Assignment to a Corporation—Failure to Obtain Consent—Forfeiture.*—A lease contained a covenant by the lessee against assigning or underletting without the previous written consent of the lessor, but such consent not to be withheld in respect of a respectable and responsible person. Subsequent assignees with consent assigned to a limited company, after the consent of the lessor had been refused.

HELD—that the words "a respectable and responsible person" include a corporation, and therefore that an assignment without the consent of the lessor to a limited company, which was respectable and responsible, did not constitute a breach of covenant.

Harrison, Ainslie & Co. v. Corporation of Barrow-in-Furness ((1891) 63 L. T. 834) not followed.

Decision of Neville, J. ([1910] 1 Ch. 754; 79 L. J. Ch. 431; 102 L. T. 427; 26 T. L. R. 387; 17 Manson, 217) reversed.

WILLMOTT v. LONDON ROAD CAR CO., LD., [1910] 2 Ch. 525; 80 L. J. Ch. 1; 103 L. T. 447; 27 T. L. R. 4; 54 Sol. Jo. 873—C. A.

25. *Underletting without Consent—Underlessee in Occupation—Surrender by Tenant—New Term Granted by Landlord—Effect on Underlease.*—Under an agreement of tenancy of certain fields the tenant agreed not to underlet without the landlord's consent in writing, and it was provided that on breach of this agreement the landlord should be entitled to re-enter, and thereupon the tenancy should determine. The tenant, without consent, underlet the premises to the plaintiff, who went into and remained in possession for several years, no notice having been taken of the breach of the agreement. Before

the expiration of his tenancy agreement the tenant voluntarily surrendered the term to the landlord, who thereupon let the premises to the defendant. The plaintiff then sued the defendant to recover possession and for damages for trespass.

HELD—that the interest of the plaintiff was not affected by the surrender by the original tenant, and could not be got rid of by merely granting a new term to the defendant, and therefore that the plaintiff was entitled to maintain the action.

PARKER v. JONES, [1910] 2 K. B. 32; 79 L. J. [K. B. 921; 102 L. T. 685; 26 T. L. R. 453—Div. Ct.

#### XVI. EFFECT OF ASSIGNMENT ON COVENANTS.

##### (a) Assignment of Lease.

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##### (b) Assignment of Reversion.

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## LAW SOCIETY.

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## LEAVE AND LICENCE.

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## LETTERS.

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## LIBEL AND SLANDER.

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See also DISCOVERY; PRACTICE; TRADE AND TRADE UNIONS.

## I. LIBEL.

- (a) Fair Comment on Matters of Public Interest.

[No paragraphs in this vol. of the Digest.]

- (b) Miscellaneous.

1. *Question for Jury—Whether Language Defamatory—Whether Understood to Refer to Plaintiff by Persons Knowing Him—Proof of Writer's Intention to Refer to Plaintiff not Necessary.*—In an action for libel, the question, if it be disputed, whether the alleged defamatory statement is a libel on the plaintiff is one of fact for the jury. That question of fact involves not only whether the language used is, when taken in its fair and ordinary meaning, defamatory, but also whether it would be understood to refer to the plaintiff by persons who knew him; and if in the opinion of the jury the language used is defamatory and a substantial number of persons who knew the plaintiff would read the alleged libel as referring to him, damages are recoverable, even although the writer or publisher may neither have known of the plaintiff's existence nor have intended to refer to him or any other particular individual.

Decision of C. A. ([1909] 2 K. B. 444; 78 L. J. K. B. 937; 101 L. T. 330; 25 T. L. R. 597) affirmed.

E. HULTON & Co. v. JONES, [1910] A. C. 20; [79 L. J. K. B. 198; 101 L. T. 831; 26 T. L. R. 128; 54 Sol. Jo. 116; 47 Sc. L. R. 591—H. L.

## (c) Practice.

See also DISCOVERY, No. 2; PRACTICE, Nos. 15, 29.

2. *Interrogatories—Innuendo—Meaning Attached by the Defendant to the Words Complained of—Inadmissibility.*—In an action for libel, the defendant denied that the words complained of by the defendant bore the meaning given them in the innuendo. The plaintiff administered interrogatories for the purpose of ascertaining what meaning the defendant himself placed on the words.

HELD—that the interrogatories were inadmissible.

*Foster v. Perryman* ((1891) 8 T. L. R. 115) not followed.

HEATON v. GOLDNEY, [1910] 1 K. B. 754; 79 [L. J. K. B. 541; 102 L. T. 451; 26 T. L. R. 383; 54 Sol. Jo. 391—C. A.

3. *Particulars—Publication—Absence of Special Grounds.*—*Semble.* There is no established practice in libel actions in England for ordering, in the absence of special grounds, particulars of the name or names of the person or persons to whom, of the date or dates on which, and of the place or places where, the alleged libel was published.

KEOGH v. INCORPORATED DENTAL HOSPITAL [OF IRELAND, [1910] 2 I. R. 166; 43 I. L. T. 253—C. A. Ireland.

- (d) Privilege.

[No paragraphs in this vol. of the Digest.]

- (e) Publication.

See Nos. 3, 5, *supra*.

## (f) Words Capable of Defamatory Meaning.

4. *Newspaper—Unauthorised Advertisement for Wet Nurse—Innuendo.*—A husband and wife brought an action against a newspaper for publishing an advertisement for a wet nurse, applicants being referred to the address where the pursuers resided and carried on a wine and spirit business. The advertisement was untrue and unauthorised. At its date the pursuers had been about four months married.

HELD, that the advertisement *per se* was not libellous, and (2) that it could not be innuended as meaning that the female pursuer had within five months of her marriage given birth to a child of which pursuer was the father and that each of the pursuers had been guilty of antenuptial fornication and was of immoral character.

WOOD v. EDINBURGH EVENING NEWS, LD., [1910] S. C. 895; 47 Sc. L. R. 786.—Ct. of Sess.

5. *Words not Libellous per se—Resolution of Hospital Committee—Refusal to Admit Student—Publication.*—K. having applied to be admitted as a student of the D. Hospital, the committee, by their registrar, wrote to him a letter enclosing the following resolution:—

### I. Libel—Continued.

"Resolved, that Mr. K. be not accepted as a student at this hospital, the committee having the right by their bye-laws to refuse any student without assigning cause." The letter was, in the absence of K., opened by his clerk, who was, with his permission, in the habit of opening letters addressed to him, of which circumstance the defendants were unaware :—

HELD—that the words were not *per se* libellous and that there was no evidence of a publication of it by the defendants for which they could be made responsible.

*Capital and Counties Bank v. Henty*, ((1882), 7 A. C. 741) applied.

KEOGH *v.* INCORPORATED DENTAL HOSPITAL [OF IRELAND, [1910] 2 I. R. 577; 44 I. L. T. 191—Div. Ct., Ireland.

### II. SLANDER.

#### (a) Actionable *per se*.

6. *Imputation of having Committed an Offence—Arrest—Offence Punishable by Fine.*—Words spoken of a person imputing that he has been guilty of an offence—i.e., a breach of the peace, for which he might be arrested at the moment, but in respect of which the punishment is fine only, are not actionable without proof of special damage.

HELLWIG *v.* MITCHELL, [1910] 1 K. B. 609; [79 L. J. K. B. 270; 102 L. T. 110; 26 T. L. R. 244—Bray, J.

#### (b) Practice.

7. *Costs—Payment into Court—Verdict for Smaller Sum.*—The plaintiff sued the defendant for slander in respect of a statement that the plaintiff had at a Parliamentary election voted twice in one division. The defendant admitted publication, but paid £10 10s. into Court, and pleaded in mitigation of damages certain letters of apology which he had written. At the trial the jury found a verdict for the plaintiff with one farthing damages.

HELD—that the plaintiff was entitled to the costs of the action.

KINNELL *v.* WALKER, 27 T. L. R. 67—Darling, J.

#### (c) Privilege.

8. *Liability of Employer for Slander Uttered by Servant—Corporation—Averments inferring Malice.*—A. brought an action of damages for slander against the Corporation of Glasgow, in which she averred that B., a tax collector in their employment, while in the course of collecting police taxes at her house, had accused her of tampering with a receipt for the taxes in order to defraud his employers, and that on her repudiation of the charge he had assaulted her. She further alleged that B. had repeated the slander in the house of a neighbour and subsequently in the tax collector's office.

HELD—that B. in uttering the statements complained of was acting within the scope of his employment, and that, accordingly, the

action was relevant; and that the occasion was privileged.

RIDDELL *v.* GLASGOW CORPORATION, [1910] [S. C. 693; 47 Sc. L. R. 630—Ct. of Sess.

#### (d) Special Damage.

[No paragraphs in this vol. of the Digest.]

### III. TRADE LIBEL.

[No paragraphs in this vol. of the Digest.]

### IV. CRIMINAL PROCEDURE.

9. *Seditious Libel—Attempting to Alienate the Allegiance of the Indian Native Liege Subjects of the King—Publication of Document calculated to stir up Discontent and Unrest among His Majesty's Liege Subjects—Definition.*—A. was indicted for printing and publishing a seditious libel, in the form of a newspaper, attempting to stir up and excite discontent and unrest among His Majesty's liege subjects, and to alienate the allegiance of the Indian native liege subjects of the King, and to cause it to be believed that it was justifiable and commendable to resort to political assassination with a view to liberate India from the government of the King.

HELD—that whoever by language either written or spoken incites or encourages others to use physical force or violence in some public matter connected with the State, is guilty of publishing a seditious libel.

The accused may not plead the truth of the statements that he makes as a defence to the charge, nor may he plead the innocence of his motive.

If the accused publishes the libel, there is no distinction in law between what he writes in it and what any other person writes in it.

R. *v.* ALDRED, 74 J. P. 55; 22 Cox, C. C. 1—[—Lord Coleridge, J.

10. *Threatening to Publish Matter with Intent to Procure Office—Evidence of Motive—Libel Act, 1843 (6 & 7 Vict. c. 96), s. 3.*—On a charge under Lord Campbell's Libel Act, 1843, sect. 3, of threatening to publish or proposing to abstain from publishing a matter touching another person with intent to procure an appointment or office of profit, evidence as to the motives of the person in so threatening or proposing is inadmissible.

R. *v.* PLAISTED, 22 Cox, C. C. 5—Pickford, J.

### LICENCE.

In respect of game—See GAME.

In respect of patent—See PATENTS AND INVENTIONS.

For marriage—See HUSBAND AND WIFE.

In respect of minerals—See MINES, MINERALS AND QUARRIES.

In respect of hawkers and pedlars—See MARKETS AND FAIRS.

For sale of intoxicants—See INTOXICATING LIQUORS; REVENUE.

**Licence—Continued.**

For music and dancing—*See* THEATRES,  
MUSIC HALLS, AND SHOWS.  
For cabs, etc., and drivers—*See* STREET  
TRAFFIC.  
Excise—*See* REVENUE.  
Generally—*See* REVENUE.

**LIEN.**

*See* ADMIRALTY; BAILMENT; BANKERS;  
BILLS OF SALE; BUILDERS; CAR-  
RIERS; SHIPPING; SOLICITORS.

**LIFE INSURANCE.**

*See* INSURANCE.

**LIGHT.**

*See* EASEMENTS.

**LIGHT RAILWAYS.**

*See* TRAMWAYS AND LIGHT RAILWAYS.

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LOCAL GOVERNMENT, No. 8;  
LUNATICS, No. 2; POOR LAW, No. 2;  
PUBLIC AUTHORITIES, I. (c).

**I. MISCELLANEOUS.**

1. *Money Paid under Mistake of Fact—Recovery—Mutual Mistake—Discovery of Mistake—Time from which Statute Runs—Whether Notification of Mistake is Necessary to Complete Cause of*

*Action—Statute of Limitations* (21 Jac. 1, c. 16).]  
—Where money has been paid under a mistake of fact common to both parties, and the person paying the money could from the time of payment with proper diligence have discovered the mistake, the Statute of Limitations runs against the right to recover the money from the date of payment, and not from the date of the discovery of the mistake; and in such case, notification of the discovery of the mistake and demand for repayment are not necessary to complete the cause of action for the return of the money, so as to enable the person suing for the return of the money to say that the cause of action is not complete and that therefore the statute does not begin to run until the discovery of the mistake has been notified to the other party.

*Brooksbank v. Smith* ((1836) 2 Y. & C. Ex. 58) and *Freeman v. Jeffries* ((1869) L. R. 4 Ex. 189) distinguished.

*BAKER v. COURAGE & Co.*, [1910] 1 K. B. 56; [79 L. J. K. B. 313; 101 L. T. 854—Hamilton, J.

**II. ACKNOWLEDGMENT OF DEBT.**

[No paragraphs in this vol. of the Digest.]

**III. PART PAYMENT.**

[No paragraphs in this vol. of the Digest.]

**IV. JUDGMENT.**

[No paragraphs in this vol. of the Digest.]

**V. FRAUD.**

[No paragraphs in this vol. of the Digest.]

**VI. RECOVERY OF MONEY CHARGED UPON LAND.**

2. *Rent-charge — Personal Covenant — Civil Procedure Act, 1833* (3 & 4 Will. 4, c. 42), s. 3—*Real Property Limitation Act, 1874* (37 & 38 Vict. c. 57), s. 1.]—Sect. 1 of the Real Property Limitation Act, 1874, qualifies sect. 3 of the Civil Procedure Act, 1833, so as to limit to twelve years the period within which the remedy upon a personal covenant to pay a rent-charge can be enforced.

*SHAW v. CROMPTON*, [1910] 2 K. B. 370; 80 [L. J. K. B. 52; 103 L. T. 501—Div. Ct.

**VII. RIGHTS TO REAL PROPERTY.**

3. *Adovowson—Equitable Mortgage—Stale Demand—Laches.*]—An adovowson was mortgaged in 1860. By the mortgage deed the mortgagor covenanted to grant and release the adovowson when required, and a power of sale was given to the mortgagees, their heirs, executors or administrators. The mortgagor having been adjudicated bankrupt in 1863, the defendant in 1892 purchased the equity of redemption from the official receiver. There had been no payment of principal or interest since the date of the mortgage. On a summons taken out for enforcing the mortgage by foreclosure:—

**HELD**—that, though the Statutes of Limitation were not applicable, a Court of equity would always refuse to aid stale demands, and that therefore, and on the ground of *laches* on the



VII. Rights to Real Property—*Continued.*

part of the mortgagees, the summons must be dismissed.

BROOKS v. MUCKLESTON, [1909] 2 Ch. 519;  
[79 L. J. Ch. 12; 101 L. T. 343—Joyce, J.]

## VIII. MORTGAGOR AND MORTGAGEE.

4. *Covenant Not to Call in Moneys Lent for Twenty Years—Special Contract.*—A mortgage in the statutory form, dated November 17th, 1887, contained a covenant that the principal was not to be called in for a period of twenty years, and during that time there had never been any payment of interest. The Court refused to import into the deed a clause that this covenant was subject to an implied condition that the interest should be paid regularly, and held that the right to foreclosure was not divisible, and that the special contract not to call in the money for that period prevented the claim from being barred by the Statute of Limitations.

HAMILL v. MATHEWS, 44 I. L. T. 25—C. A.,  
[Ireland.]

## IX. ACTIONS AGAINST EXECUTORS.

See EXECUTORS, No. 2.

## X. TRUSTEES.

See EXECUTORS, No. 2.

## LIMITATION OF LIABILITY.

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## LIQUIDATED DAMAGE.

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## LITERARY PROPERTY.

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## LITERARY SOCIETIES.

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## LIVERPOOL COURT OF PASSAGE.

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## LOCAL GOVERNMENT.

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## I. IN GENERAL.

- (a) Accounts and Audit.

See also INSURANCE, No. 6.

1. *Urban District Council—Borrowing without Sanction—Overdraft at Bankers—Interest*

### I. In General—Continued.

*on Overdraft—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 233, 234.*]—The defendants in 1903 obtained the sanction of the Local Government Board to a loan for the erection of municipal buildings. They spent, over and above the amount of the loan, a further sum of £18,350, which was borrowed from their bankers by way of overdraft. In 1907 the defendants applied to the Local Government Board for leave to borrow the amount thus overspent, but as to £4,910 a portion thereof, sanction was refused. In October, 1908, the defendants proposed to levy a general district rate to enable them to pay the £4,910, but were restrained by the Court from doing so until the trial of this action. Before action brought, the defendants had paid a sum of £855 for interest on their bank overdraft, and they proposed to pay a further sum of £900 for interest. The most recent of the items composing the £4,910 had been expended more than a year before the date of the proposed rate.

HELD—that the loan of the sum of £4,910 to the defendants from the bank by way of overdraft, without the sanction of the Local Government Board, was illegal; that the defendants must be restrained from applying any part of the general district fund or rate or any other public fund or rate under their control in repayment of the said loan or any part thereof; that the defendants were not entitled to make any payment of interest upon money borrowed without the sanction of the Local Government Board, whether such borrowing was by means of overdraft or otherwise; that the payment by the defendants of the £855 was unlawful and ought to be disallowed by the auditor on auditing defendants' accounts, but this declaration was in no way to affect the power of the Local Government Board to remit such disallowed payment, though unlawfully made, under any statute enabling them so to do; that the defendants must be perpetually restrained from making any further payments of interest upon money borrowed without the sanction of the Local Government Board or other statutory sanction, whether such borrowing be by way of overdraft or otherwise.

ATTORNEY-GENERAL *v.* TOTTENHAM URBAN [DISTRICT COUNCIL, 73 J. P. 437; 8 L. G. R. 95—Eady, J.

2. *Action to Restrain Overdrafts in respect of Electric Lighting Undertaking—Amendment of Statement of Claim—Extending Claim to Overdrafts in respect of Other Matters—Practice—R. S. C., Ord. 20, r. 4; Ord. 28, r. 1.*]—After an action had been commenced by the Attorney-General, at the relation of certain ratepayers, against a local authority to restrain (as claimed by the writ and statement of claim) alleged illegal overdrafts in respect of the electric lighting undertaking of the local authority, it appeared, after discovery of documents, that the general account of the local authority at their bankers was in fact an amalgamation of many different accounts, including the electric lighting account, and the plaintiffs thereupon applied to amend and extend their statement of claim by

alleging illegal overdrafts in respect of the general account and other accounts of the local authority.

HELD—that the proposed additional claims were so closely connected with the original cause of action that the amendments ought to be allowed.

Decision of Neville, J. reversed.

ATTORNEY-GENERAL *v.* WEST HAM CORPORATION AND OTHERS, 74 J. P. 196—C. A.

3. *Borrowing Powers—Loan by Bank on Security of Rates—No Mortgage—Interest—Surcharge—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 233.*]—In 1900 a local authority, under the sanction of the Local Government Board, borrowed £600 from a bank, to be repaid with interest within ten years, mortgaging a proportion of the rates as security. In 1902, arrangements having been made for the transfer of the corporation account to another bank, the latter bank paid off the £600 due to the first bank, and thus became creditors of the local authority for that amount. The bank also agreed to finance the local authority up to £500,000, and the local authority agreed, if called upon, to issue stock. The mortgage given to the first bank was not transferred to the second bank, nor was any mortgage or other document securing the second bank executed in its favour by the local authority. The payment of interest to the second bank on the £600 was disallowed by the auditor on the ground that no proper security had been given by the local authority, as prescribed by sect. 233 of the Public Health Act, 1875.

HELD—that it being the intention of the parties that there should be a transfer of the £600 loan and of the mortgage securing it from the first to the second bank, there had, in fact, been no new borrowing on the part of the corporation, and that there having been a sanction for the old loan and a security for the same, and therefore that the auditor was not right in disallowing the payment of interest thereon.

Decision of Div. Ct. ([1910] 2 K. B. 201; 8 L. G. R. 588) reversed.

R. *v.* LOCKE, EX PARTE BRIDGES, 79 L. J. K. B. 659; 102 L. T. 598; 74 J. P. 238; 26 T. L. R. 486; 27 T. L. R. 178; 55 Sol. Jo. 139—C. A.

4. *Borrowing Powers—Specific Purpose—Overdraft from Bank for General Purposes—Ultra vires.*]—An overdraft obtained by the defendant corporation from a bank for general purposes in respect of borrowing powers granted for specific purposes:—

HELD to be *ultra vires* and illegal.

HELD ALSO—that the application of money due to the consolidated loans fund in repayment of such overdraft was *ultra vires* and illegal; and that the borrowing of money from the bank for the purpose of the corporation's electricity accounts otherwise than in the exercise of borrowing powers with the sanction of the Local Government Board was *ultra vires* and illegal.

**I. In General—Continued.**

*Semble*, in such a case the Public Authorities Protection Act, 1893, would apply in favour of the corporation and the borough treasurer in respect of acts completed more than six months before action

ATTORNEY-GENERAL *v.* CORPORATION OF WEST  
[HAM, [1910] 2 Ch. 560; 103 L. T. 394; 74  
J. P. 406; 26 T. L. R. 683—Neville, J.]

**5. Distress Committee—Rate Contribution—Objection by Town Council to Application of Rate Money—Expenses of Equipment of Farm Colony and Conveyance of Workmen to and from Colony—Unemployed Workmen Act, 1905 (5 Educ. 7, c. 18), s. 1 (6) (a), (i.) to (iii.).]**—The Unemployed Workmen Act, 1905, s. 1 (6) (a), (i.) to (iii.) (as extended by sect. 2, and applied to Scotland by sect. 5), provides that contributions by town councils in Scotland (or by borough or district councils in England) to the expenses of distress committees shall only be applied to establishment charges, expenses of emigration or removal to another area of unemployed, and expenses incurred in relation to the acquisition of land. The distress committee for the city of Edinburgh having purchased land in the neighbourhood of the city, set up a farm colony and conveyed its unemployed workmen to and from the colony by rail. It asked a contribution from the town council to defray, *inter alia*, the expenses of equipment of the colony and transport of labour, and the town council objected.

HELD—that the town council was entitled to object to the demand and to question the proposed application of the money, and that these expenses were not “establishment charges,” or “expenses of emigration or removal to another area,” or “in relation to the acquisition of land.”

EDINBURGH TOWN COUNCIL *v.* EDINBURGH  
[DISTRESS COMMITTEE, [1910] S. C. 153; 47  
Sc. L. R. 81—Ct. of Sess.]

**(b) Areas and Boundaries.**

[No paragraphs in this vol. of the Digest.

**(c) Burial.**

[No paragraphs in this vol. of the Digest.

**(d) Bye-laws (other than Building Bye-laws) and Local Acts.**

**6. Justices—Practice—Bye-law of County Council—Proof—Sealed Copy—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 24—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75.]**—A copy of the bye-laws of a county council having a copy of the corporate seal of the council printed upon it is not sufficient evidence of the bye-laws, which must be proved by production of a copy sealed with the corporate seal of the council.

TIMOTHY *v.* FENN, 102 L. T. 283; 74 J. P. 123;  
[8 L. G. R. 156—Div. Ct.]

**(e) Contracts.**

**7. Land acquired for Pleasure-ground—Covenant not to Erect Buildings except Summer-houses,**

**Shelters, or Bandstand—Erection of Lavatories—Power of Corporation to Enter into Covenant—Injunction.]**—The defendant corporation, acting under sect. 164 of the Public Health Act, 1875, acquired from the plaintiffs certain land within their area to be devoted to the purposes of a public garden or pleasure ground, and they covenanted that no buildings or erections of any kind should be put thereon except such structures as summer-houses, a bandstand, or shelters. The defendants erected public lavatories on the land. In an action for an injunction:—

HELD—(1) that public lavatories or urinals were not erections *ejusdem generis* with the structures mentioned in the covenant, and therefore that such erections constituted a breach of the covenant; (2) that the defendants could lawfully enter into such a covenant, and that, the defendants having entered into it and committed a breach thereof, the plaintiffs were entitled to an injunction.

Ayr Harbour Trustees *v.* Oswald ((1883), 8 App. Cas. 623) distinguished.

Decision of Parker, J. ([1910] 2 Ch. 12; 102 L. T. 311; 74 J. P. 162; 26 T. L. R. 354), affirmed.

STOURCLIFFE ESTATE CO., LD. *v.* BOURNE-  
[MOUTH CORPORATION, [1910] 2 Ch. 12; 79  
L. J. Ch. 455; 102 L. T. 629; 74 J. P. 289;  
26 T. L. R. 450; 8 L. G. R. 595—C. A.]

**8. Hospital—Joint User by Several Local Authorities—Establishment Expenses Apportioned—Judgment for Arrears of Expenses—Writ Issued more than Six Months after Arrears Accrued Due—Excusable Delay—Mandamus to Levy a Rate—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 210, 230—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 68.]**—Three deeds entered into between the plaintiffs and the defendants or their predecessors in title contained an arrangement with reference to the building and management of a hospital. Under the arrangement an estimate of the maintenance expenses was made up in advance on March 31st in each year, and the various authorities from time to time duly paid their respective proportions, but on April 11th, 1906, the defendants served on the plaintiffs a notice purporting to determine the three deeds and their liability thereunder as from October 11th, 1906, and from that date ceased to use the hospital and declined to pay any portion of the establishment expenses. The plaintiffs alleged that the notice was invalid, and after long negotiations commenced this action in December, 1909.

HELD—that the notice was invalid, and that the first and third deeds were valid and still subsisting; that the judgment in the action was itself a charge within the meaning of sect. 210 of the Public Health Act, 1875; and that, as under the circumstances there had been excusable delay in bringing the action, the plaintiffs were entitled to judgment for the arrears due from the defendants and to a mandamus commanding

**I. In General—Continued.**

the defendants to levy a rate to satisfy the amount of the judgment.

WOLSTANTON UNITED URBAN DISTRICT COUNCIL, [CIVIL v. TUNSTALL URBAN DISTRICT COUNCIL, [1910] 2 Ch. 347; 79 L. J. Ch. 522; 103 L. T. 98; 74 J. P. 353; 8 L. G. R. 870—Neville, J.]

On appeal, Order varied by consent ([1910] W. N. 232; 103 L. T. 473—C. A.).

**9. Employment of Architect—No Contract under Seal—Dismissal of Architect before Work Completed—Right to Recover on quantum meruit.** At a meeting of the defendant council it was verbally resolved that the plaintiff should be employed as joint architect for the erection of a kursal which the defendants were authorised under a private Act to erect. The plaintiff prepared plans, and for some time did work in pursuance of the resolution, but before the work was finished he was dismissed.

**HELD**—that although the contract was not under seal the plaintiff was entitled to recover on a *quantum meruit* as the defendants had had the benefit of his work in an employment within the scope of their authority and for the purposes for which they were created.

HODGE v. URBAN DISTRICT COUNCIL OF MATLOCK BATH AND SCARTHIN NICK AND NUTTALL, 74 J. P. 374; 26 T. L. R. 617; 8 L. G. R. 958—Lawrence, J.

On appeal—appeal allowed on the question of the amount awarded by the jury as a *quantum meruit*, but, the amount being reduced by consent, no new trial ordered (27 T. L. R. 129; 8 L. G. R. 1127—C. A.).

**(f) Meetings.**

**10. Urban District Council—Newly-elected Council—Election of Chairman—Right of Former Chairman to Preside and Give Casting Vote—Public Health Act, 1875 (38 & 39 Vict. c. 55), Sched. I, 1 (3).**—The right to act as a chairman of a district council meeting depends upon membership of the council. Therefore, the chairman of a retiring council ceases to be chairman of the council when it goes out of office, and cannot act as chairman of the newly-elected council in virtue of his former office unless he is duly elected chairman by the members of the new council.

R. v. ROWLANDS, EX PARTE BEASLEY, [1910] 2 K. B. 930; 103 L. T. 311; 74 J. P. 453; 26 T. L. R. 658; 54 Sol. Jo. 750; 8 L. G. R. 923—Div. Ct.

**11. Election of Lord Mayor—Office with Emoluments—Vote not Received—Casting Vote—“Majority of Persons Present.”**—At the election of Lord Mayor of Cork there were forty-nine electors present. Twenty-two votes were cast for A., and twenty-one for B. C., who was present and entitled to vote, was not called upon to vote until after A., who was chairman, had declared himself elected. A salary was usually voted to the Lord Mayor after his election for his year of office.

**HELD**—that C., not having refused to vote, and having no opportunity of voting, the election was bad.

**HELD ALSO**—that, as the candidates fully expected the salary customarily voted if they were elected, it was an office of emolument, and candidates were excluded from voting for themselves.

R. (SISK) v. DONOVAN, 44 I. L. T. 136—Div. Ct., [Ireland.]

**(g) Members, Officers and Servants.**

See No. 11, *supra*; LIBEL AND SLANDER, No. 8; MASTER AND SERVANT, Nos. 110, 135; TIME, No. 2.

**(a) In General.**

[No paragraphs in this vol. of the Digest.]

**(b) Disqualifications.**

[No paragraphs in this vol. of the Digest.]

**(h) Powers.**

See also I. (a), *supra*; ELECTRIC LIGHTING, No. 1.

**12. Municipal Corporation—Corporation Land—Sale in Consideration of Perpetual Rent-charge—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 108, 109—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 72.**—A municipal corporation has power, with the consent of the Local Government Board, to dispose of its corporate land in consideration of the grant of a perpetual yearly rent-charge.

SCARBOROUGH CORPORATION v. COOPER, [1910] 1 Ch. 68; 79 L. J. Ch. 38; 101 L. T. 552; 74 J. P. 44; 26 T. L. R. 88; 8 L. G. R. 54—Joyce, J.

**(i) Practice.**

[No paragraphs in this vol. of the Digest.]

**(j) Tort.**

See HIGHWAYS, No. 11; NEGLIGENCE, V.

**II. BUILDINGS AND BUILDING BYE-LAWS.**

See also METROPOLIS, No. 1; PUBLIC HEALTH, No. 1.

**(a) Building Line.**

[No paragraphs in this vol. of the Digest.]

**(b) Continuing Offence.**

[No paragraphs in this vol. of the Digest.]

**(c) Crown.**

[No paragraphs in this vol. of the Digest.]

**(d) Deposit and Approval of Plans.**

[No paragraphs in this vol. of the Digest.]

**(e) Exemptions and Dispensations.**

[No paragraphs in this vol. of the Digest.]

**(f) Floors.**

[No paragraphs in this vol. of the Digest.]



## II. Buildings and Building Bye-laws—Continued.

## (g) Notice.

[No paragraphs in this vol. of the Digest.]

## (h) Res Judicata.

[No paragraphs in this vol. of the Digest.]

## (i) Remedies for Breach.

[No paragraphs in this vol. of the Digest.]

## (j) Waterworks.

[No paragraphs in this vol. of the Digest.]

## (k) Words: "New Buildings," "Building," "Sign," "Letting," etc.

See also No. 18, *infra*.

13. "*In or Abutting on or Adjoining*" Street—*Hoarding for Advertising Purposes*—*Hoarding Erected a Distance from Street on Vacant Land*—*Access of Public to Land and Hoarding*—*Leicester Corporation Act, 1897* (60 & 61 Vict. c. cxxviii.), s. 31.]—The appellants for advertising purposes erected on a plot of building land a hoarding some 84 feet long and 10 feet high. It stood between two rows of houses, and was nearly 11 feet back from the footway of the street, being some inches behind the front main walls of the houses on each side and filling the intervening space. No public rights existed over the land, but there was no fence between the street and the hoarding, and the land and hoarding were accessible to persons using the street.

Upon informations under a local Act for erecting the hoarding "in or abutting on or adjoining" the street, without the consent of the local authority, the justices found as a fact that the hoarding was "in" the street, and convicted the appellants.

HELD—that the hoarding was either "in" or "abutting on" or "adjoining" the street, and that the conviction was right.

ROCKLEYS, LD. *v.* PRITCHARD, 101 L. T. 575; [74 J. P. 11; 7 L. G. R. 1069—Div. Ct.]

14. "*In or Abutting on or Adjoining*" Street—*Hoarding*—*Stockport Corporation Act, 1899* (62 & 63 Vict. c. xcvi.), s. 54.]—The mere fact that a strip of land to which the public have no access happens to be between an advertisement hoarding and a highway, does not prevent such hoarding from being "in or abutting on or adjoining any street."

Whether such hoarding is "in or abutting on or adjoining any street" under such circumstances is a question of fact to be decided by the justices.

STOCKPORT CORPORATION *v.* ROLLINSON, 102 [L. T. 567; 74 J. P. 236; 8 L. G. R. 609—Div. Ct.]

15. *Temporary Building*—*Portable Structure*—"Houp-la"—*Public Health Acts Amendment Act, 1907* (7 Edw. 7, c. 53), s. 27.]—A structure called a "Houp-la" had been set up by the respondent without the permission of the local authority. It was octagonal and had an upright central pole about 13 ft. high resting on two cross-pieces, and from the top of the pole radiated eight beams supporting a canvas roof

and these beams were made fast to eight upright posts which were fixed by pins driven into the ground. The structure was closed in by a canvas screen, placed some little distance from the structure except on one side, and could be taken down in a very short time without disturbing the surface of the ground on which it was placed, and in fact had been taken down several times since its erection.

HELD—that the justices were right in holding that the structure was not a temporary building within sect. 27 of the Public Health Acts Amendment Act, 1907.

WHITEHORN *v.* SMELT, 102 L. T. 35; 74 J. P. [102; 8 L. G. R. 123—Div. Ct.]

16. "*Domestic Building*"—*Stable*—*Applicability of Bye-laws*.]—The respondent erected a stable on the vacant space at the side of a dwelling-house, without the consent or approval of the urban district council, and he was summoned for contravening bye-law No. 59, providing, for purposes of ventilation, that an open space should be left in the rear of every new domestic building. The plans showed that the stable was not intended for human habitation. Bye-law No. 1 provided that "the following words and expressions shall have the meanings hereinafter respectively assigned to them, unless such meanings be repugnant to or inconsistent with the context or subject matter in which such words or expression occur: . . . 'Domestic building' means a dwelling-house or an office building, or other out-building appurtenant to a dwelling-house, whether attached thereto or not, or a shop, or any other building not being a public building, or of the warehouse class."

HELD (Lord Coleridge, J., dissenting)—that the stable was not, with regard to bye-law No. 59, a "domestic building" within the meaning of bye-law No. 1.

COLLINS *v.* GREENWOOD, 103 L. T. 36; 74 J. P. [327; 8 L. G. R. 702—Div. Ct.]

17. "*Cul de Sac*"—*Paisley Police and Public Health Act, 1901* (1 Edw. 7, c. cciv.), s. 20.]—A proposed street of 60 feet in width from the bottom of which there would be egress by a lane 20 feet wide to another street, does not terminate in a *cul de sac*.

STEVENSON *v.* LEE, [1910] S. C. 14; 47 Sc. L. R. [11—Ct. of Sess.]

## III. MISCELLANEOUS.

18. *Bye-laws*—*Validity*—*Foreshore*—*Alleged Customary Right*—*Conviction for Infringing Bye-law*—"Erection"—*Injunction*—*Declaratory Judgment*—*Weston-super-Mare Improvement Act, 1887* (50 & 51 Vict. c. cvii.), ss. 4, 79, 179—*R. S. C., Order 25, r. 5*.]—A local authority, under the power of a special Act, made a bye-law in 1889, forbidding the erection of any booth, stall or other erection on the foreshore without permission, and a bye-law in 1900, providing that no person should, on any part of the foreshore, not appointed for the purpose, sell or offer for sale any commodity.

The plaintiff brought a coffee van on the foreshore without the permission of the local

### III. Miscellaneous—Continued.

authority, and was convicted for a breach of the bye-law of 1889 on the ground that his coffee van was an "erection" within the meaning of that bye-law. On a case stated by the justices their decision was affirmed by the Divisional Court, who also held that the bye-law was valid.

The plaintiff then brought an action against the local authority in the Chancery Division, alleging a customary right exercised for sixty years to sell from a stall or otherwise on the foreshore, and claimed (a) a declaration that the said bye-laws were *ultra vires* and void; (b) a declaration that his coffee van was not an "erection" within the meaning of the bye-law of 1889; and (c) an injunction to restrain the local council from interfering with his selling from his coffee van on the foreshore.

HELD—that the bye-law of 1889 was valid and that the coffee van was an "erection" within the meaning of the bye-law.

*Williams v. Weston-super-Mare Urban District Council* ((1908) 72 J. P. 54—Div. Ct.) approved.

Decision of Neville, J. (74 J. P. 52) affirmed.

*WILLIAMS v. WESTON-SUPER-MARE URBAN [DISTRICT COUNCIL (No. 2), 103 L. T. 9; 74 J. P. 370; 26 T. L. R. 506; 8 L. G. R. 843—C. A.]*

**19. Letting of Public Baths—Music and Dancing Licence—Statutory Restrictions—Liability of District Council—Injunction—Baths and Wash-houses Acts, 1878 (41 & 42 Vict. c. 14), s. 5, and 1899 (62 & 63 Vict. c. 29), ss. 2, 3.]**—The defendants were authorised by the Baths and Wash-houses Act, 1899, to let public baths for music and dancing, provided (a) that the defendants should obtain a licence from the county council in authority, (b) that no money for admission should be taken at the doors, (c) that the defendants should be responsible for any breach of the conditions on which the county council licence was granted which might occur during the entertainment given on such premises by their permission. The defendants were licensed by the Essex County Council, and occasionally let the baths to musical and variety entertainers, who took money at first at pay-boxes inside the doors and subsequently at pay-boxes erected outside the baths building. The defendants had, by the terms of hiring, reserved a power to exclude the entertainers if money were taken at the doors.

HELD—without deciding whether money was being taken at the doors, that the defendants could not be restrained from permitting money to be taken at the doors, because a condition prohibiting the taking of money at the doors was not one of the conditions of the county council licence; that the defendants were not responsible for the acts of their lessees; and that a mandatory injunction compelling them to take action against their tenants ought not to be granted.

*ATTORNEY-GENERAL v. WALTHAMSTOW URBAN [DISTRICT COUNCIL, [1910] 1 Ch. 347; 79 L. J. (Ch. 265; 102 L. T. 64; 74 J. P. 147; 26 T. L. R. 261; 54 Sol. Jo. 306—Joyce, J.]*

**20. Old Age Pensions—Claim Decided by Pension Committee—"Final and Conclusive"—Jurisdiction of Local Government Board to Disallow—Old Age Pensions Act (8 Edw. 7, c. 40), ss. 4, 7, 9.]**—The decision of a local pension committee on any claim or question which is not referred to the central pension authority is final and conclusive, and cannot be reviewed by the central pension authority where no new facts or change in circumstances are brought forward.

*Quere*, whether such a decision may be reviewed if a change of circumstances is shown.

A local pension committee having decided that an applicant was entitled to a pension at 2s. a week, and no appeal having been taken, the applicant purported to raise a question whether he was entitled to a pension at 2s. a week or at 5s. a week, and the pension committee again decided that he was entitled to 2s. a week. Thereupon the applicant appealed to the Local Government Board for Ireland, and they held he was not entitled to any pension.

HELD—that they had no jurisdiction to decide so, being bound by the previous decision of the local pensions committee.

*R. (PAWLEY) v. LOCAL GOVERNMENT BOARD [FOR IRELAND, [1910] 2 I. R. 440; 44 I. L. T. 7—C. A., Ireland.]*

**21. Old Age Pension—Local Pension Committee's Power to Disallow—Old Age Pensions Act, 1908 (8 Edw. 7, c. 40).]**—A local pension committee has power to discharge an order made by the committee awarding an old age pension to a person who at the time of the order was under the age of seventy.

*R. (SINNOTT) v. LOCAL PENSION COMMITTEE OF [THE COUNTY OF WEXFORD, [1910] 2 I. R. 403; 44 I. L. T. 93—Div. Ct., Ireland.]*

## LOCOMOTIVES.

See HIGHWAYS, Nos. 12, 20; RAILWAYS AND CANALS; STREET TRAFFIC.

## LODGING HOUSES.

See LANDLORD AND TENANT; PUBLIC HEALTH.

## LONDON.

See METROPOLIS.

## LONDON BUILDING ACT.

See METROPOLIS.

**LONDON, PORT OF.**

See WATERS AND WATERCOURSES;  
SHIPPING AND NAVIGATION.

**LOTTERIES.**

See GAMING AND WAGERING.

**LUNATICS AND PERSONS OF UNSOUND MIND.**

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See also CRIMINAL LAW, Nos. 1, 82, 96.

**I. SUMMARY RECEPTION ORDER.**

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**II. PRACTICE.**

1. "Residence"—*Jurisdiction of County Court—County Court Jurisdiction in Lunacy (Ireland) Act, 1880 (43 & 44 Vict. c. 39), s. 2.*—A lunatic who was confined in Monaghan Asylum had a farm in County Cavan, and usually resided there.

HELD—that "residence" under the County Court Jurisdiction in Lunacy (Ireland) Act, 1880, means ordinary residence as distinguished from compulsory detention, and that the lunatic's real residence was in Cavan.

IN RE MURTHA, EX PARTE CONLON, 44 I. L. T. [114—Sir S. Walker, L.C., Ireland.

**III. COMMITTEE AND RECEIVER.**

[No paragraphs in this vol. of the Digest.]

**IV. VESTING ORDER.**

[No paragraphs in this vol. of the Digest.]

**V. PROPERTY AND CAPACITY OF LUNATIC.**

[No paragraphs in this vol. of the Digest.]

**VI. MAINTENANCE.**

2. *Criminal Lunatic—Past Maintenance—Claim by the Treasury—Crown Debt—Statute of Limitations (21 Jac. 1, c. 16)—Lunatic Asylums Act, 1853 (16 & 17 Vict. c. 97), s. 104—Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64), s. 10, sub-s. 3—Lunacy Act, 1890 (53 Vict. c. 5), s. 116, sub-s. 4; s. 299, sub-s. 1.*—The effect of sect. 10, sub-sect. 3, of the Criminal Lunatics Act, 1884, introducing by reference sect. 104 of the Lunatic Asylums Act, 1853, is to create a statutory liability in a criminal lunatic's estate in respect of his past maintenance when detained in a criminal lunatic asylum, and being in the nature of a Crown debt the full amount thereof as from the date of the coming into operation of the Act of 1884—where the claim extends so far back as that period—is recoverable as such against the estate of the lunatic, and is not limited by the Statute of Limitations to six years' arrears of past maintenance.

IN RE J., [1909] 1 Ch. 574; 78 L. J. Ch. 348; [100 L. T. 281; 21 Cox, C. C. 766—C. A.

**VII. CREDITORS.**

[No paragraphs in this vol. of the Digest.]

**VIII. CONTRACTS.**

[No paragraphs in this vol. of the Digest.]

**IX. PAUPER LUNATICS.**

See also POOR LAW, Nos. 3, 6.

3. *Irremovability—Justices' Order—Appeal—Lunacy Act, 1890 (53 Vict. c. 5), s. 303.*—Under sect. 303 of the Lunacy Act, 1890, an appeal to quarter sessions lies at the instance of the guardians of a union from an order of justices adjudicating that a pauper lunatic has acquired a status of irremovability in that union.

EASTBOURNE GUARDIANS v. CROYDON UNION, [1910] 2 K. B. 16; 79 L. J. K. B. 646; 102 L. T. 595; 74 J. P. 286; 26 T. L. R. 447; 8 L. G. R. 503—Div. Ct

See S. C. under POOR LAW IV. (d).

**X. FOREIGN LUNATICS.**

[No paragraphs in this vol. of the Digest.]

**MACHINERY.**

See FACTORIES AND WORKSHOPS  
NEGLIGENCE; PATENTS; RATES  
AND RATING.

**MAGISTRATES.**

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**Magistrates—Continued.**

III. PROCEDURE . . . . .	COL. 347
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See also CRIMINAL LAW AND PROCEDURE; CROWN PRACTICE, No. 5; HUSBAND AND WIFE. XV.; INTOXICATING LIQUORS; POOR LAW.

**I. DISQUALIFICATION OF JUSTICES.**

[No paragraphs in this vol. of the Digest.]

**II. JURISDICTION AND POWERS OF JUSTICES.**

See also No. 15, *infra*; ANIMALS, I., No. 7; BANKERS, No. 6; CRIMINAL LAW, Nos. 17, 18; INTOXICATING LIQUORS, II. (a), No. 20; MASTER AND SERVANT, No. 134; PRISONS, No. 1; STREET TRAFFIC, II.

1. *Absence of Defendant—Appearance by Solicitor—Plea of Guilty—Admission of Previous Conviction—Warrant of Arrest—Power to Issue—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), ss. 13, 14.*—The defendant was summoned for driving a motor car at a speed exceeding 10 miles an hour on a road where that was the maximum speed allowed, and he wrote to the prosecutor admitting the offence. At the hearing the defendant was not personally present but appeared by a solicitor, who, on his behalf, pleaded guilty to the charge and also to a previous conviction. Notwithstanding this the justices granted a warrant for the arrest of the defendant on an intimation from the inspector of police in charge of the case that he required the defendant's personal attendance.

HELD—that the justices had no justification for the issue of the warrant.

R. v. MONTGOMERY AND OTHERS, JUSTICES, EX PARTE LONG, 102 L. T. 325; 74 J. P. 110; 26 T. L. R. 225; 8 L. G. R. 234—Div. Ct.

2. *Apprehended Breach of the Peace—Recognizances to be of Good Behaviour.*—An information was laid against a defendant alleging that he intended to lead a procession through the streets of Liverpool on a certain day, that the consequence of his having on a previous occasion led a similar procession through the streets had been a breach of the peace, riot, and damage to property, and that the informant apprehended that similar consequences would ensue again, and praying that the defendant be ordered to find sureties to keep the peace and to be of good behaviour. The magistrate issued a warrant, upon which the defendant was arrested and brought before him on the day prior to that on which the procession was intended to be held. The magistrate then granted a series of adjournments during which the defendant was liberated on his own recognizances and those of two sureties, and ultimately some weeks after the day in

question had passed ordered the defendant to enter into his own recognizances for twelve months to keep the peace and be of good behaviour or in the alternative to be imprisoned for four months.

HELD—that in the circumstances the magistrate had jurisdiction to make the order although the date of the intended procession had passed.

R. v. LITTLE AND DUNNING, EX PARTE WISE, [101 L. T. 859; 74 J. P. 7; 26 T. L. R. 8—Div. Ct.]

3. *Husband and Wife—Enforcement of Order for Payment of Weekly Sum to Wife—Imprisonment—Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 4—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 54—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 9.*—Where an order has been made under the Summary Jurisdiction (Married Women) Act, 1895, that a husband shall pay a weekly sum to his wife, such order may be enforced by an order of imprisonment, in default of sufficient distress, without proof that the husband had the means to pay the sum in respect of which he has made default.

R. v. RICHARDSON AND OTHERS, JUSTICES, EX PARTE SHERREY, [1909] 2 K. B. 851; 79 L. J. K. B. 13; 101 L. T. 541; 73 J. P. 434; 25 T. L. R. 711—Div. Ct.

4. *Warrant of Commitment—Judicial Act—Certiorari.*—A warrant of commitment issued by justices is a judicial act, where, upon the face of the conviction, it appears that the jurisdiction to issue it depends upon the non-payment by the defendant of a sum of money by a certain date. Where, therefore, a sum of money was, by the terms of a conviction, ordered to be paid by the defendant by a certain date, and such sum was duly paid, but the justices, in ignorance of that fact, issued a warrant of distress, and subsequently a warrant of commitment:—

HELD—that a writ of *certiorari* should issue to bring up and quash the warrant of commitment.

R. v. DOHERTY AND OTHERS, EX PARTE ISAACS, 74 J. P. 304; 26 T. L. R. 502—Div. Ct.

5. *Bona Fide Question of Title—Summary Jurisdiction (Ireland) Act, 1851 (14 & 15 Vict. c. 92), s. 8.*—A workman occupying a portion of his employer's house used, in going to his work, a right of way enjoyed by his employer. At the end of the right of way was a garden, over which it was necessary to pass in order to get from the right of way to a public lane.

HELD—that at the prosecution of a workman at the suit of the owner of an alleged servient tenement, for trespass, the employer of the workman having a right of way expressly over a portion of the premises, there was a *bona fide* question of title, and the justices had no jurisdiction to convict.

R. (FITZGERALD) v. JUSTICES OF COUNTY [CORK, 44 I. L. T. 110—Div. Ct., Ireland.]



### III. PROCEDURE.

*See also* LOCAL GOVERNMENT, No. 6;  
PUBLIC HEALTH, No. 4.

6. *Absence of Informant—Offer to Adjourn—Refusal of Offer—Objection to Conviction—Summary Jurisdiction Act, 1848* (11 & 12 Vict. c. 43), s. 13.]—The appellant was summoned by the respondent, a superintendent of police, for driving a motor cycle at a speed which was dangerous to the public, having regard to all the circumstances of the case. At the hearing the appellant appeared personally along with his solicitor, but the respondent was not present either personally or by counsel or solicitor, the witnesses for the prosecution being examined by a subordinate police officer. During the course of the case the appellant's solicitor requested the justices' clerk to make a note of the name of the police officer who was conducting the case, whereupon the bench offered to adjourn the case. The appellant's solicitor, however, said that he preferred that the case should proceed. The case proceeded accordingly and the appellant was convicted.

HELD—that the absence of the informant could not be put forward as an objection to the conviction after the offer to adjourn had been declined by the appellant's solicitor.

MAY v. BEELEY, [1910] 2 K. B. 722; 79 L. J. [K. B. 852; 102 L. T. 326; 74 J. P. 111; 8 L. G. R. 166—Div. Ct.

7. *Depositions—Person Charged with Indictable Offence—Duty to take Deposition at Residence of Witness Dangerously Ill—Indictable Offences Act, 1848* (11 & 12 Vict. c. 42), s. 17—*Criminal Law Amendment Act, 1867* (30 & 31 Vict. c. 35), s. 6.]—Where a person is brought before a magistrate charged with any indictable offence, it is the duty of such magistrate, under sect. 17 of the Indictable Offences Act, 1848, if it is practicable for him to do so, to take the deposition of a witness who is dangerously ill, and is therefore unable to attend the Court house, at the place where the witness is. Whether it is or is not practicable for the magistrate to take such deposition is a question for the magistrate's own discretion, which, however, he must exercise in a judicial manner, without making a distinction depending on the gravity of the offence. Where it is not practicable for such magistrate to act, application may be made, under sect. 6 of the Criminal Law Amendment Act, 1867, that some other magistrate should take the deposition.

R. v. BROS, EX PARTE HARDY, [1911] 1 K. B. [159; 74 J. P. 483; 27 T. L. R. 41; 55 Sol. Jo. 47—Div. Ct.

8. *Non-County and Non-Quarter Sessions Borough—Costs of Unsuccessful Prosecutions—Destination of Unappropriated Fines.*]—In the non-county borough of Pembroke, which has 10,000 inhabitants and no separate Court of quarter sessions, the salary of the justices' clerk is paid by the borough, while, under contract with the justices of the county of Pembroke, the cost of police is borne by the county in return for a

fixed annual payment. Questions having arisen between the borough and county justices as to (1) the destination of unappropriated fines inflicted by the borough justices; and (2) whether, in prosecutions instituted by the police before the borough justices, in which the fees of the justices' clerk are not recovered from the defendant, such fees should be paid by the county or the borough:—

HELD—that fines imposed by the borough bench and not otherwise appropriated were, unless some legal defence was shown, payable to the county treasurer, and that the costs of prosecutions undertaken by the police before the borough justices, in cases in which such costs were not remitted and were not paid by the defendant, were not chargeable to the funds of the county.

GEORGE v. THOMAS, [1910] 2 K. B. 951; 80 [L. J. K. B. 7; 103 L. T. 456; 74 J. P. 398; 8 L. G. R. 849—Scrutton, J.

9. *Irregularity in Form of Summons—Cruelty to Animals Act, 1849* (12 & 13 Vict. c. 92), s. 2—*Summary Jurisdiction Act, 1848* (11 & 12 Vict. c. 43), s. 10.]—When a summons is issued under the Cruelty to Animals Act, 1849, the justices cannot decline to proceed simply because the summons is irregular in form. They should hear the evidence, and, when they have done so, they should then make up their minds as to what offence under the summons has been proved.

JOHNSON v. NEEDHAM, [1909] 1 K. B. 626; 78 [L. J. K. B. 412; 100 L. T. 493; 73 J. P. 117; 25 T. L. R. 245; 22 Cox, C. C. 63—Div. Ct.

10. *Offence Punishable with more than Three Months' Imprisonment—Not Apparent on Face of Information—Right to Trial by Jury—Omission by Justices to Give Statutory Warning—Summary Jurisdiction Act, 1879* (42 & 43 Vict. c. 49), s. 17.]—Where a person is charged before the magistrates at petty sessions with an offence in respect of which, on summary conviction, he may be imprisoned for a term exceeding three months, such person is entitled to claim to be tried by a jury. Justices are not bound, before the charge is gone into, to warn the accused as to his right to elect, unless it appear upon the face of the information, that the offence charged is punishable with more than three months' imprisonment, but when, during the hearing of the case, evidence is given which makes the charge become such an offence, it at once becomes the duty of the justices to give the statutory warning.

R. v. BEESBY AND ANOTHER, JUSTICES, ETC., [AND DUGDALE, RECORDER OF BIRMINGHAM, [1909] 1 K. B. 849; 78 L. J. K. B. 482; 100 L. T. 486; 73 J. P. 234; 25 T. L. R. 337; 53 Sol. Jo. 289; 22 Cox, C. C. 47—Div. Ct.

### IV. APPEALS.

#### (a) To Quarter Sessions.

*See also* LUNATICS, No. 3.

11. *Indecent Assault upon Person under Age of Sixteen—Consent to Summary Trial—Conviction*

#### IV. Appeals—Continued.

*—Right of Appeal to Quarter Sessions—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 12, 19—Children Act, 1908 (8 Edw. 7, c. 67), s. 128 (2) and Sched. II.]—When an adult is charged before a Court of summary jurisdiction with the commission of the offence mentioned in the 2nd Schedule to the Children Act, 1908, of committing an indecent assault upon a female under the age of sixteen years, and consents to be dealt with summarily, and is dealt with summarily and convicted, he has no right of appeal to quarter sessions against such conviction, inasmuch as by sect. 128, sub-sect. 2, of the Children Act, 1908, such offence is to be included in the 1st Schedule to the Summary Jurisdiction Act, 1879, and is therefore to be included with the offences specified in the second column of that schedule to which the provisions in sect. 12 of the Act of 1879 apply, under which when an adult consents to be tried summarily and is convicted he has no appeal to quarter sessions.*

*R. v. London Justices, Ex parte Lambert* ([1892] 1 Q. B. 664), applied.

*R. v. DICKINSON, EX PARTE DAVIS*, [1910] 1 [K. B. 469; 79 L. J. K. B. 256; 102 L. T. 48; 74 J. P. 76—Div. Ct.

**12. Certiorari—Conviction at Petty Sessions—Pending Appeal to Quarter Sessions.]—Certiorari will not lie to quash a conviction by a petty sessional court pending an appeal to quarter sessions.**

*R. v. BARNES AND OTHERS, EX PARTE LORD* [VERNON, 102 L. T. 860; 74 J. P. 231—Div. Ct.

#### (b) By Special Case.

**13. Notice of Appeal—Form—Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2.]—The appellants sent to the respondent a copy of the notice served on the justices asking them to state a case for the opinion of the Court along with a letter in the following terms: "Enclosed we send you copy notice asking the justices to state case and copy of the case stated."**

**HELD—**(Bucknill, J., dissenting) that there was a sufficient notice of appeal to satisfy sect. 2 of the Summary Jurisdiction Act, 1857.

Form given in Short and Mellor's Crown Office Practice, 2nd ed., p. 628, approved.

*DICKESON & CO. v. MAYES*, [1910] 1 K. B. 452; [79 L. J. K. B. 253; 102 L. T. 287; 74 J. P. 139; 26 T. L. R. 236—Div. Ct.

**14. Practice—Form of Case Stated—Facts Found—Evidence—Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2.]—Cases stated by justices must set forth the facts found, and not merely the evidence. In future the Court will send back, without allowing costs, cases in which the evidence is set out instead of the facts being found.**

*STAR TEA CO. v. NEALE*, [1909] W. N. 200; 8 [L. G. R. 5—C. A.

**15. Jurisdiction—Death of Justices before Signing Case—Case Signed by Surviving Justice alone—Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2.]—A summons was heard at petty sessions before three justices, A., B., and C., who unanimously dismissed it, but unanimously agreed to state a case under Summary Jurisdiction Act, 1857. A case, the draft of which had been approved of on behalf of both the parties, was approved of and signed by A. It was approved of by B., who, however, died without having signed it. C. died without having either approved of or signed it.**

**HELD—**that there was jurisdiction to hear the case.

*KEAN v. ROBINSON*, [1910] 2 I. R. 306—Div. Ct., [Ireland.

**HELD ON APPEAL—**that no appeal lay to the Court of Appeal, [1910] 2 I. R. 323—C. A., [Ireland.

#### V. ACTIONS AGAINST MAGISTRATES.

[No paragraphs in this vol. of the Digest.]

### MAINTENANCE.

*See* ACTION; BASTARDY; HUSBAND AND WIFE; LUNATICS; POOR LAW; WILLS.

### MALICIOUS DAMAGE.

*See* CRIMINAL LAW.

### MALICIOUS PROSECUTION AND PROCEDURE.

*See* DEPENDENCIES, No. 18.

### MANDAMUS.

*See* CROWN PRACTICE.

### MANITOBA.

*See* DEPENDENCIES AND COLONIES.

### MANOR.

*See* COPYHOLDS AND MANORS.

### MANSLAUGHTER.

*See* CRIMINAL LAW AND PROCEDURE.

**MARGARINE.***See* FOOD AND DRUGS.**MARINE INSURANCE.***See* INSURANCE.**MARITIME LIENS.***See* SHIPPING AND NAVIGATION.**MARKET GARDENS.***See* AGRICULTURE.**MARKETS AND FAIRS.****I. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**II. TOLLS.**

[No paragraphs in this vol. of the Digest.]

**III. HAWKERS.****I. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**II. TOLLS.**

[No paragraphs in this vol. of the Digest.]

**III. HAWKERS.***See* METROPOLIS, No. 10.**MARRIAGE.***See* HUSBAND AND WIFE.**MARRIAGE, PROOF OF.***See* EVIDENCE; HUSBAND AND WIFE.**MARRIAGE SETTLEMENTS.***See* CONFLICT OF LAWS; SETTLEMENTS.**MARRIED WOMAN.***See* HUSBAND AND WIFE.**MARSHALLING ASSETS AND SECURITIES.***See* BANKRUPTCY AND INSOLVENCY;  
EXECUTORS AND ADMINISTRATORS.**MARTIAL LAW.***See* ROYAL FORCES.**MASTER AND SERVANT.**

COL.

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## VII. APPRENTICES

See also AGENCY; CRIMINAL LAW, No. 51; EDUCATION, No. 8; REVENUE, No. 5.

# I. LIABILITY OF MASTER FOR INJURY TO SERVANT.

See also NEGLIGENCE, Nos. 12, 13.

## 1. Under Workmen's Compensation Acts, 1897—1909.

### (a) Accident.

1. *Strain—Condition of Workman—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.]—A workman while engaged in tightening a nut with a spanner strained himself and thereby ruptured an aneurism of the aorta, which caused his death. The exertion involved was quite ordinary and incidental to his ordinary work. A *post-mortem* examination showed that the aneurism was in such an advanced condition that it might have burst while the man was asleep, and that very slight exertion or strain would be sufficient to bring about a rupture.

HELD (Lord Atkinson and Lord Shaw dissenting)—that there was evidence which justified the county court judge's finding, that the workman's death resulted from an injury by accident arising out of the employment within the meaning of the Workmen's Compensation Act, 1906.

*Per* Lord Loreburn, L.C.—In such a case the accident arises out of the employment when the required exertion producing the accident is too great for the workman, whatever the degree of exertion or the condition of the workman's health.

Decision of C. A. ([1909] 2 K. B. 798; 78 X.D.

L. J. K. B. 1057; 101 L. T. 475; 25 T. L. R. 760; 53 Sol. Jo. 763) affirmed.

CLOVER, CLAYTON & Co. v. HUGHES, [1910] A. C. 242; 79 L. J. K. B. 470; 102 L. T. 340; 26 T. L. R. 359; 54 Sol. Jo. 375; 3 B. W. C. C. 275; 47 Sc. L. R. 885—H. L.

2. *Apoplexy—Evidence Equally Balanced for or Against Accident—Onus of Proof—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).]—A collier died of apoplexy during working hours in a mine. The majority of the doctors said that his arteries were in a very diseased condition, and that apoplexy might have come upon him when asleep in bed, or when walking about, or when over-exerting himself. The collier's work on that day was to build a "pack"; but there was no evidence that the apoplexy came upon him when he was incurring a strain.

HELD—that as the evidence as to the cause of death was equally consistent with an accident and with no accident, the applicants had not discharged the onus of proof that was upon them.

Decision of C. A. (102 L. T. 621; 3 B. W. C. C. 216) affirmed.

BARNABAS v. BERSHAM COLLIERY CO., 103 [L. T. 513; 55 Sol. Jo. 63—H. L.

3. *Murder—Risk incidental to Particular Employment—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.]—The murder of a servant who by reason of his employment is peculiarly exposed to such a risk is an accident arising out of the employment within the meaning of sect. 1 of the Workmen's Compensation Act, 1906.

*Challis v. London and South-Western Ry. Co.* ([1905] 2 K. B. 155) applied.

NISBET v. RAYNE AND BURN, [1910] 2 K. B. 689; [80 L. J. K. B. 84; 103 L. T. 178; 26 T. L. R. 632; 54 Sol. Jo. 719; 3 B. W. C. C. 507—C. A.

See S. C. No. 47, *infra*.

4. *Gamekeeper—Attacked by Poachers—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.]—A gamekeeper, while in the discharge of his duty, was attacked by poachers and injured.

HELD (Cherry, L.J., dissenting)—that his injuries were caused by an "accident" arising out of and in the course of his employment within the meaning of sect. 1 of the Workmen's Compensation Act, 1906.

ANDERSON v. BALFOUR, [1910] 2 I. R. 497; 44 [I. L. T. 168; 3 B. W. C. C. 588—C. A., Ireland.

5. *Nervous shock—Accident to Fellow Workman—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.]—The applicant, while at work in the respondents' colliery, heard a shout for help from the next working place, and on going there he found a fellow workman had been seriously injured by a timber prop and some coal having fallen upon him. The applicant lifted and helped to carry away the injured workman, who died very shortly afterwards. The effect on the



**I. Liability of Master for Injury to Servant—***Continued.*

applicant was such that he sustained a nervous shock which incapacitated him from working at the coal face.

**HELD**—that such nervous shock constituted personal injury to the applicant, which was caused by an accident arising out of and in the course of his employment.

**YATES v. SOUTH KIRKBY, ETC., COLLIERIES**, [LD., [1910] 2 K. B. 538; 79 L. J. K. B. 1035; 103 L. T. 170; 26 T. L. R. 596; 3 B. W. C. C. 418—C. A.

**6. Sewer Gas Poisoning—"Accident"—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1.]—E., a labourer, who was in the respondent's service as caretaker of an unoccupied house, opened up, in July, 1909, in the course of his employment, certain cesspools. Early in August E. complained of being unwell, and on August 23 he consulted a doctor, who thought that he was suffering from the smell of paint. In September another doctor was consulted, and he came to the conclusion that E. was suffering from poisoning from sewer gas. On October 30 E. died. It was admitted that the disease from which E. had suffered was obscure, and that there was nothing to show the exact date at which it was contracted by him. In proceedings for compensation under the Workmen's Compensation Act, 1906, by E.'s widow, the county court judge came to the conclusion that E. died from the results of poisoning contracted while working on the cesspools, and he made an award in favour of the applicant.

**HELD**—that E.'s death had not been caused by "accident" within the meaning of the Act.

**EKE v. HART-DYKE**, [1910] 2 K. B. 677; 80 [L. J. K. B. 90; 103 L. T. 174; 26 T. L. R. 613; 3 B. W. C. C. 482—C. A.

**7. Death from Erysipelas—Resulting from Injury—Possibility—Abstract Question—Opinion of Medical Referee—Given as Sworn Evidence—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1 (1).]—At an arbitration there was a dispute between the medical experts as to the mere possibility of a wound in the hand on April 17th causing erysipelas of the face on July 7th. There was no evidence that it had done so. The case was adjourned, and the medical referee sent for and sworn as a witness. He was asked the abstract question whether it was impossible for the organisms of erysipelas to be latent for so long a time, to which he replied that it was not impossible. The facts of the particular case were not put before him.

**HELD**—there was no evidence to justify the finding that the deceased man died from personal injury by accident.

A medical referee should not be sworn and examined as a witness.

**HUGO v. H. W. LARKINS & Co.**, 3 B. W. C. C. [228—C. A.

**8. Scullion with Skin Disease—Injury by Use of Hot Water and Soda—Workmen's Compensation**

*Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).]—A scullion at an hotel was the subject of a disease (erythromelalgia) affecting his skin, and making it abnormally sensitive. On the day he commenced work he washed up crockery for a number of hours in a tank containing hot water, soft soap, and caustic soda. His hands became greatly inflamed, his nails came off, and he was disabled for a long time.

**HELD**—that this was an injury by accident within the meaning of sect. 1 of the Workmen's Compensation Act, 1906.

**Ismay, Imrie & Co. v. Williamson** ([1908] A. C. 437) followed.

**DOTZAUER v. STRAND PALACE HOTEL, LD.**, [3 B. W. C. C. 387—C. A.

**9. Onus of Proof—Inference—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1 (1).]—Whilst a workman was driving a cart the horse fell, the shaft broke, and the man apparently was thrown out. He went to a farm to borrow another cart: being unsuccessful in this he walked away with the horse and was subsequently found dead on the road at the top of a hill. The medical evidence was that he died from syncope, but that it was impossible to say for certain what had caused the syncope. The county court judge held that the dependant had not discharged the onus of proving that the death was caused by the accident.

**HELD**—that the Court could not interfere with the decision, as it was for the judge to draw the inference from the facts that were put before him.

**POWERS v. SMITH**, 3 B. W. C. C. 470—C. A.

**10. Death Due to Chill while Working in Cold Water—Unlooked-for Mishap in Course of Employment—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), ss. 1, 8 (6).]—An employee of a woollen mill, while working in a mill race, contracted a chill and died within eight days of acute nephritis.

**HELD**—that his dependants were entitled to compensation under the Workmen's Compensation Act, 1906, inasmuch as the deceased had died in consequence of "an unusual effect of a known cause"—"an unlooked-for mishap in the course of his employment."

**Ismay, Imrie & Co. v. Williamson** ([1908] A. C. 437) applied.

**SHEERIN v. CLAYTON & Co.**, [1910] 2 I. R. 105; [44 I. L. T. 23; 3 B. W. C. C. 583—C. A., Ireland.

**11. Hurrying with Parcel—Death from Heart Disease—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1.]—A workman who had been suffering for some years from progressive heart disease became faint while hurrying to a railway station with a parcel weighing 17 lbs., for his employer, and died shortly afterwards. The county court judge thought that there was no evidence of an accident, but he was of opinion that there was evidence to support the following findings of facts:—(1) That the deceased died from disease; (2) that the disease was of long standing and progressive; (3) that in conse-

### I. Liability of Master for Injury to Servant—*Continued.*

quence of the existence of disease the exertion involved in carrying the heavy parcel quickly to the train caused collapse and death.

**HELD**—that the death was attributable to the disease, and that the county court judge was right in finding that there was no evidence of accident within the meaning of the Workmen's Compensation Act.

O'HARA *v.* HAYES, 44 I. L. T. 71; 3 B. W. C. C. 586—C. A., Ireland.

### (b) Alternative Remedies.

*See also* No. 18, *infra*.

**12. Claim under the Workmen's Compensation Act—Receipt under the Employers' Liability Act—Receipt not an Agreement—Accord but no Satisfaction—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (2) (b), (3).]**—A workman was injured and claimed compensation under the Workmen's Compensation Act, 1906, making no reference to the Employers' Liability Act. Later he returned to work, and at the instance of his employers he signed a receipt for £35 "in full settlement of all claims which I may have under the Employers' Liability Act, 1880 . . . and in full discharge of all claims . . . arising out of the said accident." The actual money paid at the time was only £17 10s., and the balance which had been paid after was found as a fact to have been wages by the arbitrator in a subsequent arbitration under the Act of 1906. The employers pleaded accord and satisfaction evidenced by the receipt, and further contended, that if the receipt took effect under the Act of 1906, the matter had been "settled by agreement": if under the Act of 1880, the man had "taken proceedings independently of this Act," within the meaning of sect. 1 (2) (b).

**HELD**—there was accord but no satisfaction, as only £17 10s. was paid as compensation and not £35; and that sect. 1 (2) (b) did not apply to the case.

HAWKES *v.* RICHARD COLES AND SONS, 3 B. W. C. C. 163—C. A.

**13. Action against Stranger—Taking Weekly Payments from Employer—Knowledge of Contents and Effect of Receipt—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 6.]**—The plaintiff, who met with an accident in the course of his employment, owing, as he alleged, to the negligence of the defendants' servants, the defendants not being the plaintiff's employers, accepted several weekly payments from his employers, and gave them receipts therefor in the following terms:—"Received under the Workmen's Compensation Act, 1906 . . . the sum of 12s. 8d., being compensation at the rate of one half my average weekly wages up to . . . in respect of an accident which occurred to me on or about April 17, 1909." Subsequently the plaintiff repaid to his employers the amounts he had received from them, and then sued the defendants for damages. At the trial the plaintiff stated that he did not understand the

nature and terms of the receipts he had signed. The county court judge non-suited the plaintiff, holding, as a matter of law, that the plaintiff had recovered compensation within the meaning of sect. 6 of the Workmen's Compensation Act, 1906, and that his action was therefore barred.

**HELD**—that the county court judge was wrong in non-suiting the plaintiff, as it was a question for the jury whether the plaintiff understood the nature and effect of the receipts he had signed.

Decision of Div. Ct. (26 T. L. R. 580; 3 B. W. C. C. 536) affirmed.

HUCKLE *v.* LONDON COUNTY COUNCIL, 27 [T. L. R. 112—C. A.]

### (c) Ancillary or Incidental Work.

[No paragraphs in this vol. of the Digest.]

### (d) Assessment of Compensation.

*See also* Nos. 37, 97, *infra*.

### (1) Difference in Wages or Earning Capacity.

*See also* I. 1 (o), *infra*.

**14. Partial Incapacity—"Suitable Employment"—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (3).]**—What is suitable employment within the meaning of par. 3 of the First Schedule to the Workmen's Compensation Act, 1906, is a question of fact and should be determined by having regard to the physical condition of the workman, and the nature and character of the work that he did before the accident, and the nature and character of the work offered to him after the accident. His old employment is not suitable if by reason of his partially disabled condition it exposes him to special risks.

EYRE *v.* HOUGHTON MAIN COLLIERY CO., LD., [1910] 1 K. B. 695; 79 L. J. K. B. 698; 102 L. T. 385; 25 T. L. R. 302; 54 Sol. Jo. 304; 3 B. W. C. C. 250—C. A.

**15. Earning Capacity after Accident—Method of Calculation—Carrying on Business—Public-house—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (2) (a), (3).]**—Employers applied to a sheriff as arbiter to diminish or end the weekly payment of 18s. 3d. agreed to be paid by them to a miner injured in their employment on April 15th, 1908, and maintained that his incapacity had ceased or at least was lessened. The arbiter found that the miner had not recovered from the effects of the accident, and was unfit to resume work as a miner; that his average weekly earnings prior to the accident were £1 16s. 6d., giving an annual income of about £94; that he had from Whit Sunday, 1908, to Whit Sunday, 1909, carried on a public-house; that he had invested about £100 of capital therein; and that the net profits for said year, after allowing for interest on capital, wages, and other expenses, amounted to about £98. The sheriff took this sum of £98 as the measure of the earning capacity of the miner, and accordingly found that the miner's incapacity for work had terminated, and ended the weekly payment.

**HELD**—that the sheriff's method of arriving at wage-earning capacity was fallacious, and that he should have ascertained what work the man

# I. Liability of Master for Injury to Servant— Continued.

actually did in the public-house, and what these services would have been considered worth if he had been serving someone else instead of himself.

PATERSON v. A. G. MOORE & Co., [1910] S. C. [29; 47 Sc. L. R. 30; 3 B. W. C. C. 541—Ct. of Sess.

## (2) Extras, Deductions, and Apportionment.

16. *Seaman—Wages Paid Between Date of Accident and Discharge—“Payment Allowance or Benefit”—Period of Incapacity—Merchant Shipping Acts, 1894 and 1906—Workmen’s Compensation Act, 1906* (6 Edw. 7, c. 58), s. 7 (1) (A) (E); *Sched. I. (3)*.—Wages paid to a seaman between the date of an accident and his discharge by the shipowners do not come within the words “payment, allowance or benefit” in *Sched. I. (3)* of the Workmen’s Compensation Act, 1906.

HELD—therefore, that the county court judge was right in declining to have regard to eight days’ wages paid to a seaman between the happening of the accident and his discharge, as the words “during the period of his incapacity” mean the period during which the shipowner is liable to pay compensation under the Act, and which begins when the seaman ceases to be entitled to maintenance under the Merchant Shipping Acts.

Decision of C. A. ([1909] 2 K. B. 704; 78 L. J. K. B. 1144; 101 L. T. 90; 25 T. L. R. 691; 53 Sol. Jo. 650) reversed.

McDERMOTT v. OWNERS OF STEAMSHIP [“TINTORETTO,”] [1910] W. N. 274; 55 Sol. Jo. 124—H. L.

17. *Concurrent “Contract of Service”—Earnings in Laundry—Additional Earnings as Music Teacher—“Workman”—Workmen’s Compensation Act, 1906* (6 Edw. 7, c. 58), s. 13, *Sched. I., (1), (2)*.—The applicant, who was under twenty-one, was employed in the defendants’ laundry at 7s. a week. She also gave music lessons to a neighbour’s children, and in respect of that she received 3s. a week. Having been injured in the course of her employment at the laundry, she claimed compensation. The county court judge held that in estimating her weekly earnings for the purpose of settling the amount of compensation payable by the defendants under the Workmen’s Compensation Act, 1906, she was not entitled to claim anything in respect of the 3s. a week she earned in giving music lessons; he therefore awarded her compensation at 7s. a week under proviso (b) of par. 1 of *Sched. I.*

HELD—that the county court judge was entitled so to hold.

*Seuble (per Cozens-Hardy, M.R.)*—A skilled music teacher who gives lessons to a pupil, either in his own house or in the pupil’s house, cannot be regarded for the purposes of the Act as the “workman,” and the pupil as the “employer.”

SIMMONS v. HEATH LAUNDRY CO., [1910] [1 K. B. 543; 79 L. J. K. B. 395; 102 L. T. 210; 26 T. L. R. 326; 54 Sol. Jo. 392; 3 B. W. C. C. 200—C. A.

18. *Right of Workman to Coal Allowance during Incapacity—Award of Compensation—Right to Sue for Coal Allowance—Workmen’s Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (2) (b); *Sched. I., (1), (3)*.—The plaintiff, a miner in the service of the defendants, was, by the custom of the colliery, entitled to certain allowance coal during incapacity caused by accident. Having been injured by accident in the course of his employment the plaintiff claimed and was awarded compensation under the Workmen’s Compensation Act, 1906. He thereafter brought an action against the defendants claiming the allowance coal under the custom.

HELD—that the plaintiff’s right to the allowance coal formed one of the terms of his contract of service with the defendants, and was not in the nature of compensation for the injury received, and that consequently he was not debarred by the provisions of sect. 1, subsect. 2 (b), of the Workmen’s Compensation Act, 1906, from maintaining the action, after an award for compensation under the Act had been made in his favour.

SIMMONDS v. STOURBRIDGE BRICK AND FIRE [CLAY CO., LD.,] [1910] 2 K. B. 269; 79 L. J. K. B. 997; 102 L. T. 732; 26 T. L. R. 430—Div. Ct.

19. *Concurrent Contracts of Service—Workman in Royal Naval Reserve—Workmen’s Compensation Act, 1906* (6 Edw. 7, c. 58), s. 9; *Sched. I. (2)*.—The applicant was a stoker on a merchant vessel, and was also enrolled in the Royal Naval Reserve as a stoker, in respect of which latter appointment he was entitled to a retainer of £6 a year. He was injured by accident in the course of his employment on the merchant vessel, and his injuries were such as to disable him from continuing to serve in the Royal Naval Reserve. In a claim for compensation against the shipowners under the Workmen’s Compensation Act, 1906:—

HELD (Farwell, L.J., dissenting)—that in computing the applicant’s average weekly earnings the amount he received as a stoker in the Royal Naval Reserve should be added to his earnings from the shipowners.

BRANDY v. OWNERS OF STEAMSHIP “RAPHAEL,” [1910] W. N. 266; 27 T. L. R. 127—C. A.

20. *Average Weekly Earnings—Deductions from Wages—Special Expenses—Workmen’s Compensation Act, 1906* (6 Edw. 7, c. 58), *Sched. I., 2 (d)*.—A miner was killed by accident arising out of and in the course of his employment. He employed a drawer whom he himself paid out of his wages. The deceased had been accustomed to purchase explosives for his work from his employers, and the price of these they deducted in paying his wages.

HELD—that in determining the average weekly earnings of the deceased there should be deducted from his gross wages the amount of wages paid by him to his drawer, but not the sums retained by his employers as the cost of the explosives.

*Abram Coal Co. v. Southern* ([1903] A. C.

### I. Liability of Master for Injury to Servant— *Continued.*

306) and *Midland Ry. v. Sharpe* ([1904] A. C. 349) followed.

*McKee v. STEIN & Co., LD.*, [1910] S. C. 38; [47 Sc. L. R. 39; 3 B. W. C. C. 54—Ct. of Sess.

**21. Partial Dependency—Mode of Assessing Compensation—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. I. (1) (a) (ii.)*.—In assessing the amount of compensation payable under the Workmen's Compensation Act to a partial dependant, the county court judge took into account not only the wages of the deceased in the employment in which he had been killed, which did not extend beyond six weeks, but also the wages in his previous employment. During 150 weeks the deceased had paid the applicant 10s. per week, receiving in return his support, estimated at 7s. a week; during six weeks the deceased had given the applicant 10s. per week out of his wages. In the first case the county court judge made a deduction for maintenance, and in the second he allowed the amount actually received by the applicant.

**HELD** (Cherry, L.J., dissenting)—that the county court judge had adopted a reasonable mode of arriving at the sum payable, and that in cases of partial dependency, the Court was not bound to calculate the compensation first on the basis of a total dependency and then take into consideration other sources of maintenance which might be possessed by the applicant; the statutory duty of the Court in cases of partial dependency was to award such sum as was reasonable and proportionate to the injury to the dependants.

*Osmund v. Campbell and Harrison* ([1905] 2 K. B. 852) discussed.

*O'NEILL v. BANSHA CO-OPERATIVE AGRICULTURAL AND DAIRY SOCIETY, LD.*, [1910] 2 I. R. 324; 44 I. L. T. 52—C. A., Ireland.

### (3) Length and Continuity of Employment.

**22. Collier Injured and Unable to Resume Old Work—Subsequent Different Employment by Same Employers—Break in Employment—Death by Second Accident—Compensation Assessed on Earnings in New Employment—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. I. (1) (a) (1.)*.—In December, 1908, a collier was injured by accident. In December, 1909, he tried to resume his old work as a collier with the same employers, but being unable to do it was given work by them as a ventilation or windroad man—work paid by the day not piecework. In January, 1910, he died from an accident within the meaning of the Act. A county court judge held that there had been a break in the continuity of his employment and he assessed the compensation for the dependants upon the basis of his earnings as a windroad man.

**HELD**—that the question was one of fact for the county court judge, and there being evidence

to support it, the Court would not interfere with his decision.

*WILLIAMS v. WYNNSTAY COLLIERIES, LD.*, [3 B. W. C. C. 473—C. A.

### (4) General.

**23. Suspensory Award—Rupture—Workman Fit for Work Subject to Proper Precautions—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58).—While at work on board a vessel the applicant fell and ruptured himself. He was laid up for a short time and then returned to work. Later, he was medically examined, and the report resulting from that examination was that he was ruptured, but was fit for work if he wore a proper truss and took proper precautions. On an application for compensation under the Workmen's Compensation Act, 1906, the county court judge refused to award any compensation or to make a suspensory order so as to keep the employers' liability alive.

**HELD**—that a suspensory award of 1d. a week should have been made so as to preserve the right of the applicant in the event of future trouble arising as the result of his injury.

*Owners of the Vessel "Tynron" v. Morgan* ([1909] 2 K. B. 66) applied.

*GRIGA v. OWNERS OF S. "HARELDA,"* 26 [T. L. R. 272; 3 B. W. C. C. 116—C. A.

### (e) Commencement of Proceedings: Notice, Claim, Dispute.

*See also* Nos. 78, 125, *infra*; EXECUTORS, No. 5.

**24. Notice of Accident—No Written Notice—Employer Prejudiced in His Defence—Notice Given to a Cashier and Clerk of Employers—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 2 (1) (a)—*Workmen's Compensation Rules, 1907, r. 34.*—A workman (an ostler) was injured after working for eight days, and as a result he was away from work for two or three weeks, and a year and a half later he died from the effects of the accident. He gave no written notice of the accident. A cashier of the employers knew of the accident shortly after it occurred, visited the workman when he was ill at his home, paid him full wages when he was away—a strike was in progress—and appointed and paid a substitute for that period.

**HELD**—that there was evidence that the employers were not prejudiced in their defence by the want of written notice of the accident.

*BUTT v. GELLYCEIDRIM COLLIERY CO., LD.*, [3 B. W. C. C. 44—C. A.

**25. Notice—No Notice for Three Months after Accident—Employers Prejudiced—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 2 (1).—A workman was discharged from his employment on October 2nd, 1909. On October 11th he saw a doctor, and was found to be suffering from rupture. On October 13th he gave his employers written notice of an accident which he said, had occurred on July 14th, 1909, and on October 22nd he was examined by the employers' doctor in the presence of his own. The man'



# I. Liability of Master for Injury to Servant— *Continued.*

doctors admitted that it was possible that the rupture commenced at some date earlier than July 14th. The workman had not given to the employers written notice of the accident before October 13th, but it appeared that he had complained to a man under the foreman, the "leading hand" from whom he took orders, that he had "strained himself."

**HELD**—that there was no evidence to justify the county court judge's finding that the employers were not prejudiced in their defence by the want of notice.

**HANCOCK v. BRITISH WESTINGHOUSE ELECTRIC CO.,** 3 B. W. C. C. 210—C. A.

**26. Notice—Insufficiency—Prejudice to Employers' Defence—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 2.]—An applicant for compensation under the Workmen's Compensation Act, 1906, met with an accident on December 15th, 1908, and did not return to work after December 24th, but the notice prescribed by sect. 2 of the Act was not served until April 9th, 1909. The applicant's foot had to be amputated, as tuberculosis was present in the joint, but according to the medical evidence for the respondents, the tuberculosis could have been developed without any accident, and, owing to the length of time that had elapsed since the accident, it was not possible to say whether it was due to disease or accident.

**HELD**—that the notice was not given in time, and that, as the employers were, in consequence, prejudiced in their defence, the applicant's claim failed.

**STRONGE v. J. & J. HAZLETT, LD.,** 44 L. T. 10; [3 B. W. C. C. 581—C. A., Ireland.

**27. Claim for Compensation—No Demand for Specific Sum—Workmen's Compensation Act, 1897** (60 & 61 Vict. c. 37), s. 2.]—Under sect. 2 (1) of the Workmen's Compensation Act, 1897, a "claim for compensation" need not be a claim for a specific sum.

Decision of C. A. (25 T. L. R. 163) reversed.

**THOMPSON v. GOOLD & CO.,** [1910] A. C. 409; [79 L. J. K. B. 905; 103 L. T. 81; 26 T. L. R. 526; 54 Sol. Jo. 599; 3 B. W. C. C. 392—H. L.

**28. Claim not Made Within Six Months—Onus of Proof—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 2 (1) (b).]—The onus is upon the applicant to prove that a claim for compensation was made by him within six months of the accident, and if he does not prove this, he must then show that he comes within the proviso of sect. 2 (1) (b) of the Act.

**ROBERTS v. CRYSTAL PALACE FOOTBALL CLUB, LD.,** 3 B. W. C. C. 51—C. A.

**29. Claim—"Within Six Months"—Computation of Time—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 2 (1).]—A workman was injured in the course of his employment at 11.30 a.m. on November 24th, 1908. No claim

for compensation was made by him till May 24th, 1909, when two claims were lodged on his behalf, the first at 5.30 p.m., the second at 11 p.m.

**HELD**—that the claim was made "within six months of the occurrence of the accident."

**PEGGIE v. WEMYSS COAL CO., LD.,** [1910] S. C. [93; 47 Sc. L. R. 149—Ct. of Sess.

**30. Liquidation of Company by which Workman Employed—Contract with Insurers—Transfer of Rights to Workman—Compliance with Provisions of Policy of Insurance—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), ss. 1, 5 (1).]—In the event of any employer, who has entered into a contract with insurers in respect of any liability under the Workmen's Compensation Act, 1906, becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up, sect. 5 of that Act enables a workman injured by accident arising out of and in the course of his employment to stand by way of subrogation in the place of the employer with regard to the insurers; but a workman who takes the benefit of the section must take it with all its limitations. Where, therefore, a policy of insurance requires any difference or dispute arising between the employers and the insurers in respect of the policy to be referred to arbitration in accordance with the provisions of the Arbitration Act, 1889, such a reference is a condition precedent to the commencement of arbitration proceedings under the Act of 1906 to enforce a claim for compensation by the workman against the insurers.

**KING v. PHOENIX ASSURANCE CO.,** [1910] [2 K. B. 666; 80 L. J. K. B. 44; 103 L. T. 53; 3 B. W. C. C. 442—C. A.

## (f) Dependants.

See also No. 21, *supra*.

**31. Husband and Sons Killed—Earnings of Sons Contributed to Common Fund of Household—Whole or Partial Dependency on Husband—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.]—A father and two sons were employed at the same colliery. The sons lived with their parents, to whom they gave all their earnings, and those earnings, together with the father's, formed one common fund out of which the whole household was maintained. By an accident at the colliery, the father and both sons were killed. The widow, on behalf of herself and the younger children, claimed compensation under the Workmen's Compensation Act, 1906, in respect of the death of the father and the two sons.

**HELD**—that the applicants were dependent on each and all of the three deceased workmen, and were entitled to compensation on that footing.

Decision of C. A. (78 L. J. K. B. 1060; 101 L. T. 434; 25 T. L. R. 758; 53 Sol. Jo. 732) reversed.

**HODGSON v. OWNERS OF WEST STANLEY [COLLIERY],** [1910] A. C. 229; 79 L. J. K. B. 356; 102 L. T. 194; 26 T. L. R. 333; 54 Sol. Jo. 403; 3 B. W. C. C. 260, 392; 47 Sc. L. R. 881—H. L.

### I. Liability of Master for Injury to Servant— *Continued.*

**32. Mother of Illegitimate Child—Family Fund**—*Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. 13.]—M. had married a woman with an illegitimate son, of whom he was not the putative father. The three lived together, the son paying his wages to his mother, who put them into the common fund out of which the whole family was maintained. The son was killed by accident, and the mother claimed compensation as a "dependant."

HELD, without hearing argument, that, as dependency was a question of fact in each case, and as it was admitted that on the facts in this case the mother was dependent in part on her son's earnings, she was entitled to compensation.

*Hodgson v. Owners of West Stanley Colliery* (*supra*) followed.

Decision of C. A. ([1909] 2 K. B. 521; 78 L. J. K. B. 849; 100 L. T. 871; 25 T. L. R. 633) reversed.

MCLEAN *v.* MOSS BAY HEMATITE IRON AND [STEEL CO., LD., [1910] W. N. 102; 54 Sol. Jo. 441; 3 B. W. C. C. 402—H. L.

**33. Wife Living Apart from Husband and Supporting Herself—Partial Dependency—Workmen's Compensation Act**, 1906 (6 Edw. 7, c. 58), s. 13.]—The applicant, who was married in 1881, left her husband in 1888 on account of his cruelty, and had never since lived with him. There was no agreement for separation; the applicant never made any application for maintenance against her husband, who never in fact paid the applicant anything for her own or her children's support, and she supported herself by her own exertions. In 1910 the husband met with a fatal accident while employed at the respondent's collieries. In a claim by the applicant for compensation under the Workmen's Compensation Act, 1906, in respect of her husband's death:—

HELD—that there was nothing in the facts which obliged the Court to hold that there was any release by the applicant of her husband's obligation to support her, that the presumption of dependency had not been rebutted, and that the county court judge was right in finding that there was a partial dependency of the applicant on the husband, and in making an award in her favour upon that footing.

*Williams v. Ocean Coal Co.* ([1907] 2 K. B. 422) followed.

KEELING *v.* NEW MONCKTON COLLIERIES, LD., [1910] W. N. 249; 103 L. T. 622; 27 T. L. R. 90—C. A.

**34. Partial Dependents—"Reasonable and Proportionate to the Injury"—Question of Fact—Workmen's Compensation Act**, 1906 (6 Edw. 7, c. 58), *Sched. I. (1) (a) (ii.)*.]—The amount due to partial dependants is a question of fact in each case.

LITTLEFORD *v.* CONNELL, 3 B. W. C. C. 1—[C. A.

**35. Partial Dependency—Question of Fact—Workmen's Compensation Act**, 1906 (6 Edw. 7, c. 58), s. 13.]—A workman who was drowned at sea had been accustomed in previous employments to give money regularly to his parents, who, with their family, claimed compensation as dependants of the deceased. The judge found that the family were partly dependent on the workman's earnings, and awarded compensation.

HELD—that, dependency being a question of fact, there was evidence to support the decision.

TURNER AND OTHERS *v.* MILLER AND [RICHARDS, 3 B. W. C. C. 305—C. A.

**36. Workman Ceasing to Send Money Home—Question of Fact—Workmen's Compensation Act**, 1906 (6 Edw. 7, c. 58), s. 13.]—A father claimed compensation as a dependant of his son, who had paid considerable sums to the family fund while employed as a fisherman in 1906, 1907, and 1908; the last payment was made early in 1909. In the summer of that year he made two voyages of a month, receiving £2 5s. a month wages and his keep. He did not send any part of the £2 5s. home to his father, and on the last of these voyages he was drowned.

HELD—that the fact that at the time of the son's death no money was being sent home was not sufficient to upset the county court judge's finding of fact that the father was a partial dependant.

ROBERTSON *v.* HALL BROTHERS STEAMSHIP CO., [3 B. W. C. C. 368—C. A.

**37. Partial Dependency—Principle on which Compensation Assessed—Father of Deceased Infant Workman—Wages Paid to Father—"Earnings"—Deduction of Cost of Maintenance—Workmen's Compensation Act**, 1906 (6 Edw. 7, c. 58), *Sched. I. (1) (a) (ii.)*.]—A workman, a boy fourteen years of age, was killed by an accident. His wages were 6s. 11d. a week. These wages were paid to the father and helped to maintain the family. The father worked at a colliery and supplemented his wages by carrying on the trade of a barber on certain evenings and a part of Saturday. The deceased assisted his father in this trade, and the latter estimated the value of his services at 6s. a week. The county court judge held that the applicant was not a dependant or partial dependant, as 6s. 11d. a week was not more than sufficient to maintain the boy.

HELD—that the father was partially dependant upon the boy's earnings, and that the cost of the maintenance of the deceased ought not to be taken into account in assessing the amount of compensation.

*Semble*, the value of the deceased's services to his father in shaving customers were not "earnings" within the Workmen's Compensation Act, 1906.

*Main Colliery Co., Ltd. v. Davies* ([1900] A. C. 358) followed; *Osmond v. Campbell and Harri-*

### I. Liability of Master for Injury to Servant— *Continued.*

*son, Ltd.* ([1905] 2 K. B. 852) discussed and followed.

*HALL v. TAMWORTH COLLIERY CO. LD.*, [1910] [W. N. 268; 130 L. T. Jo. 148; 45 L. J. N. C. 806—C. A.]

#### (g) Indemnity.

38. *Negligence of Fellow Workmen—Breach of Factory Regulations—Claim by Employers to be Indemnified by Fellow Workmen*—"Some Person other than the Employer"—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 6.]—When a workman has been injured by an accident arising out of and in the course of his employment, caused by negligence on the part of a fellow workman, and compensation has been duly paid to the injured workman by his employer, the latter is entitled to be indemnified by the fellow workman, as the words "some person other than the employer," in sect. 6 of the *Workmen's Compensation Act, 1906*, include a fellow workman of the injured workman.

Dictum of Pollock, C.B., in *Southcoate v. Stanley* ((1856) 1 H. & N. 247) disapproved.

Decision of C. A. (*sub nom. Gibson v. Dunkerley Bros., Lees and Sykes Third Parties*, 102 L. T. 587; 3 B. W. C. C. 345) affirmed.

*LEES v. DUNKERLEY BROS.*, 103 L. T. 467; 55 [Sol. Jo. 44—H. L.]

39. *Employer and Third Party—Joint Tort Feasors—Compensation Recovered from Employer—Right of Employer to Indemnity—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 6.]—If an accident to a workman is caused by the negligence of his employers and of a third party, and the workman recovers compensation from his employers under the *Workmen's Compensation Act, 1906*, the employers are not entitled, under sect. 6 of the Act, to an indemnity from such third party.

*CORY & SONS, LD. v. FRANCE, FENWICK & CO., LD.*, [1911] 1 K. B. 114; [1910] W. N. 215; 27 T. L. R. 18; 55 Sol. Jo. 10—C. A.]

#### (h) Jurisdiction.

40. *Questions not Clearly Raised in the Particulars—Power of Amendment of County Court Judge at Hearing—Refusals to Undergo Distinct Surgical Operations—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (3).]—A workman sustained injury to his thumb. Liability was admitted, and weekly payments were made. The employers then asked him to undergo a course of massage at their expense; he agreed and went to the hospital, where, however, he refused to submit to the breaking down of the adhesions under an anæsthetic, which was a necessary preparation for the massage. Later, the employers applied for termination of the weekly payments on the ground that the man had unreasonably refused to have the top joint of his thumb amputated.

The county court judge stated that he thought the refusal to have the adhesions broken down

was covered by the employers' application, but that to prevent any doubt on this point he would amend the particulars; he then found that that refusal was unreasonable, and terminated the compensation.

HELD (Farwell, L.J., dissenting)—that as the employers had failed to prove the only refusal (amputation) alleged as unreasonable in their particulars, their application failed, and that they were debarred from raising the question of the other refusal (massage), as it was a distinct issue which had not been raised on the particulars given to the workman, and which was too serious to be imported into the case by amendment at the hearing.

*PROPRIETORS OF HAY'S WHARF, LD. v. BROWN*, [3 B. W. C. C. 84—C. A.]

41. *Agreement to Pay Compensation—Refusal to Sign Form of Agreement—Refusal by Registrar to Record Memorandum—Subsequent Application for Arbitration by Workman—Jurisdiction—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (3).]—An employer having agreed with a workman to pay him compensation, refused to sign a form of agreement. The registrar refused to record a memorandum of the agreement. The workman then applied for an arbitration under the Act, and at the hearing the county court judge found that, in consequence of the employer's refusal to sign, there was no agreement, and made an award in the workman's favour in the terms of the agreement.

HELD—that there was no jurisdiction to make an award, as no question had arisen as to the liability to pay compensation or as to the amount or duration within the meaning of sect. 1 (3) of the Act.

*MERCER v. HILTON*, 3 B. W. C. C. 6—C. A.]

42. *Application to Terminate Compensation—No Compensation being Paid—No Memorandum Recorded—Competency—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (3) and *Sched. I*. (16).]—A workman was injured on July 31st, 1908, and his employers paid him compensation until April 1st, 1909, on which date payment was stopped. On May 17th, 1909, the employers presented an application to have it declared that the workman's right to compensation had terminated on April 1st, 1909, in respect that he had then, as they averred, recovered, or alternatively to have such an award of partial compensation granted as to the Court might seem just.

HELD—that the application for arbitration was competent at a date when (1) no compensation was actually being paid to the workman, the parties being in dispute as to the amount and duration of compensation, and (2) no memorandum of agreement had been recorded.

*Southbrook Fireclay Co., Ltd. v. Laughland* ([1908] S. C. 831) followed.

*NELSON v. SUMMEREE IRON CO., LD.*, [1910] [S. C. 360; 47 Sc. L. R. 344—Ct. of Sess.,

# I. Liability of Master for Injury to Servant— Continued.

## (i) Medical Examination.

See also No. 76, *supra*; I. 1 (o), *infra*.

**43. Medical Referee — Appeal — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 8 (1) (f)**—*Rules as to Certifying Surgeons, Medical Referees, etc., dated June 21st, 1907, r. 16, and Form 15 of Schedule.*—Observations on Form 15 in the Schedule to the Regulations, dated June 21st, 1907, made by the Secretary of State and the Treasury under sect. 8 of the Act, which only provides for the medical referee "allowing" or "dismissing" an appeal.

JONES v. EBBW VALE STEEL, IRON, AND COAL  
[Co., LD., 3 B. W. C. C. 181—C. A.]

**44. Medical Referee — Certificate that Incapacity has Ceased—Weekly Payments Stopped — Supervening Incapacity — Application for Arbitration—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (15).**—Where a medical referee certifies that a workman's incapacity has ceased and the workman acquiesces in the stopping of weekly payments, but the employers do not apply for the compensation ended on a review, the workman is not barred by the medical referee's certificate from subsequently applying for arbitration as to compensation on the ground of supervening incapacity.

KING v. UNITED COLLIERIES CO., LD., [1910]  
[S. C. 42; 47 Sc. L. R. 41; 3 B. W. C. C. 546  
—Ct. of Sess.]

**45. Medical Reference—Reference before Hearing Evidence—Regulations as to Medical Referees, June, 1907, par. 20—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (15).**—In arbitrations under the Workmen's Compensation Act, 1906, it is incompetent for the arbitrator to make a reference to a medical referee under Sched. II. (15) of the Workmen's Compensation Act and par. 20 of the Regulations made thereunder, unless in the course of the same application proof has been led.

GRAY & SONS v. CARROLL, [1910] S. C. 700; 47  
[Sc. L. R. 646; 3 B. W. C. C. 572—Ct. of Sess.]

**46. Medical Referee — Reference by County Court Judge — Judge not Bound by Referee's Report — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (15).**—Where a county court judge, under Sched. II. (15) of the Workmen's Compensation Act, 1906, submits to a medical referee for report any matter which seems material to any question arising in the arbitration, the judge is not bound by the referee's report, but should exercise an independent judgment.

QUINN v. FLYNN, 44 I. L. T. 183; 3 B. W. C. C.  
[594—C. A., Ireland.]

## (j) On, In, or About.

[No paragraphs in this vol. of the Digest.]

# (k) Out of and in the Course of Employment.

See also I. 1 (a), *supra*.

**47. Cashier Robbed and Murdered while Carrying Employers' Money—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.**—A cashier in the employment of colliery owners while taking, in the course of his duty, money from his employers' office to the colliery for the purpose of paying the men's wages was robbed and murdered.

HELD—that the cashier met his death by accident arising out of, and in the course of, his employment within the meaning of sect. 1 of the Workmen's Compensation Act, 1906.

NISBET v. RAYNE AND BURN, [1910] 2 K. B.  
[689; 80 L. J. K. B. 84; 103 L. T. 178;  
26 T. L. R. 632; 54 Sol. Jo. 719; 3  
B. W. C. C. 507—C. A.]

**48. Dinner Hour—Needless Risk by Workman for His own Pleasure—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.**—A workman was employed in the defendants' works. In those works there was a large hot-water tank, 5½ feet from the floor, and to get to the top of it there was a platform, the top of the tank being 2½ feet higher than the platform. No one except the chief engineer and the chief stoker were allowed to deal with the tank in any way. The room in which the tank was situated was about 150 yards from the room in which the particular workman was employed. One night, while working on the night-shift, the workman ate his supper at the top of the tank, and when he had finished and was about to go back to his work he fell through an aperture into the tank and thereby sustained injuries which resulted in his death.

HELD—that the accident did not arise out of the workman's employment.

BRICE v. EDWARD LLOYD, LD., [1909] 2 K. B.  
[804; 79 L. J. K. B. 37; 101 L. T. 472; 25  
T. L. R. 759; 53 Sol. Jo. 744; 2 B. W. C. C. 26  
—C. A.]

**49. Accident while on Way to Work—Accident on Premises of Employers — Duties not Begun—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (1).**—A miner, while proceeding to his work by the usual and recognised way, tripped and fell, sustaining injuries resulting in incapacity. The accident happened on premises belonging to the mine-owners at a point about 360 yards from a lamp cabin, where it was the miner's duty to obtain and examine his safety lamp preparatory to proceeding to the pit-head and commencing his work. The time of the accident was about twenty minutes before the time when the miner had to be down the pit.

HELD—that the accident did not arise out of and in the course of the claimant's employment.

ANDERSON v. FIFE COAL CO., LD., [1910] S. C.  
[8; 47 Sc. L. R. 3; 3 B. W. C. C. 539—Ct. of  
Sess.]

**50. Burden of Proof—Unexplained Accident to Seaman — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.**—An engineer on board



### I. Liability of Master for Injury to Servant— *Continued.*

a steamship left his berth one night saying that he would go on deck for a breath of fresh air. He was not seen again alive, and next day his dead body was found in the water close to the ship.

HELD (Lord Loreburn, L.C., and Lord James of Hereford, dissenting)—that from these facts the Court could not draw the inference that the accident arose out of the employment, and therefore that the deceased man's widow was not entitled to compensation under the Workmen's Compensation Act, 1906.

Decision of C. A. ([1909] 2 K. B. 46; 78 L. J. K. B. 536; 100 L. T. 739; 25 T. L. R. 452; 53 Sol. Jo. 448; 11 Asp. M. C. 251; 2 B. W. C. C. 76) affirmed.

MARSHALL v. OWNERS OF S.S. WILD ROSE, [1910] A. C. 486; 79 L. J. K. B. 912; 103 L. T. 114; 26 T. L. R. 608; 54 Sol. Jo. 678; 3 B. W. C. C. 514—H. L.

51. *Captain of Ship going Ashore—Own Pleasure or Ship's Business—Burden of Proof—Quay—Area of Duties—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (1).—Where a captain of a ship went on shore, and on his way back to his ship was drowned by falling off the quay, the evidence was equally consistent with his having gone on the ship's business or for his own purposes.

HELD—that though he might have had to go on the quay for the purposes of his duties, that did not make the quay necessarily a part of the area of his duties, and consequently that the applicant, his widow, had not discharged the burden put upon her of proving that the accident arose out of and in the course of his employment.

*Low or Jackson v. General Steam Fishing Co., Ltd.* ([1909] A. C. 523) distinguished.

*Moore v. Manchester Liners, Ltd.* ([1909] 1 K. B. 417—C. A. [reversed by H. L. (*infra*)] followed.

HEWITT v. OWNERS OF SHIP "DUCHESS," [1910] 1 K. B. 772; 79 L. J. K. B. 867; 102 L. T. 204; 26 T. L. R. 300; 54 Sol. Jo. 325; 3 B. W. C. C. 239—C. A.

52. *Seaman—Disappearance at Sea—Missed while on Duty—Inference—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.—A seaman who was on deck in pursuance of his duty was missed and never seen again. It appeared that on the previous evening he had complained of being ill and had been supplied with medicine before going on watch.

HELD (Buckley, L.J., dissenting)—that there was evidence from which the Court could draw the inference that the accident causing the death of the seaman arose out of and in the course of his employment.

*Bender v. Owners of SS. "Zent"* ([1909] 2 K. B. 41) and *Marshall v. Owners of S.S. "Wild Rose"* (*supra*) distinguished.

RICE v. OWNERS OF SHIP "SWANSEA VALE," [102 L. T. 270; 26 T. L. R. 276; 3 B. W. C. C. 152—C. A.

53. *Seaman Going Ashore for Own Purposes—Fall from Ladder on Returning—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.—M. was a fireman employed on board a steamship. While that steamship was lying off Brooklyn, M. went ashore with leave for his own purposes to buy certain articles that he wanted. H. arrived back at the quayside after midnight, and in climbing up the ladder which connected the ship with the quay he fell into the water and was drowned.

HELD (Lord Macnaghten and Lord Mersey dissenting)—that the accident arose out of and in the course of M.'s employment, and, therefore, that his widow was entitled to claim compensation.

*Per* Lord Loreburn, L.C.: An accident befalls a man "in the course of" his employment, if it occurs while he is doing what a man so employed may reasonably do within a time during which he is employed, and at a place where he may reasonably be during that time.

Decision of C. A. ([1909] 1 K. B. 417; 78 L. J. K. B. 463; 100 L. T. 164; 25 T. L. R. 202) reversed.

MOORE (PAUPER) v. MANCHESTER LINERS, [LD., [1910] A. C. 498; 79 L. J. K. B. 1175; 103 L. T. 226; 26 T. L. R. 618; 54 Sol. Jo. 703; 3 B. W. C. C. 527—H. L.

54. *Seaman Going Ashore—Course of the Employment—Out of the Employment—Risks Incidental to Employment—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.—By going on shore with leave a seaman does not interrupt the course of his employment, but any accident that occurs during the period of his being on shore is generally, if not necessarily, due to a danger to which he is exposed as a member of the public, and not as one of the crew of the ship, and therefore is one which does not arise "out of his employment." But if, whether in his hours of leisure or not, it becomes necessary for him in fulfilment of his employment to get on board his vessel, an accident which occurs in his doing so is normally an accident arising out of his employment, because it is due to a danger incidental to his service in that ship. The return to the ship is in the course of his employment, but the risks do not become risks arising out of his employment until he has to do something specifically connected with his employment on the ship. Thus, if the risk is one due to the means of access to the ship the accident is rightly said to arise out of his employment; but if the accident is shown to arise from something not specifically connected with the ship, it cannot be said to arise out of his employment.

*Moore v. Manchester Liners, Ltd.* (*supra*) discussed.

KITCHENHAM v. SS. "JOHANNESBURG" [(OWNERS); LEACH v. OAKLEY STREET & Co., [1910] W. N. 275; 27 T. L. R. 124; 55 Sol. Jo. 124—C. A.

55. *Engineer Returning to Ship—Unexplained Accident—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.—While a steam trawler was lying in dry dock, the second engineer

# **I. Liability of Master for Injury to Servant—** *Continued.*

Having completed his work on board for the morning went home for his dinner. According to the evidence, he had reached the side of the dry dock on his way back to the ship, and some one spoke to him there. He was never seen again alive, and his dead body was found in the dry dock. There was no evidence as to how the accident happened, but apparently he had fallen into the dock in trying to get on board the ship.

**HELD**—that there was no evidence to justify the Court in saying that the accident arose out of and in the course of the workman's employment.

**GILBERT v. OWNERS OF STEAM TRAWLER "NIZAM,"** [1910] 2 K. B. 555; 79 L. J. K. B. [1172; 103 L. T. 163; 22 L. R. 604; 3 B. W. C. C. 455—C. A.]

**56. Unexplained Drowning of Night Watchman—Evidence—Inference—Onus of Proof—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1.]—The burden of proving that an accident comes within the terms of the Workmen's Compensation Act, 1906, rests on the applicant for compensation; if the applicant leaves the case doubtful as to the existence of the conditions which would justify an award in his favour, or if the evidence is consistent with the absence or presence of such conditions, then he fails just as if he were plaintiff in an action for negligence; the county court judge is entitled to draw an inference from proved facts, but his inference should not be founded on mere guesses. Where there are circumstances to show that an accident not arising out of the employment is conceivable, an inference drawn to that effect is sustainable.

**GATTON v. LIMERICK STEAMSHIP CO.,** 44 [I. L. T. 141—C. A., Ireland.]

**57. Workman on his Way to Work—Returning to Ship after Absence for Own Pleasure—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1 (1).]—A ship's fireman left his ship lying in the Thames on a Sunday, and went to his son's house, where he slept the night. Early next morning he made his way back towards his ship. On reaching the public quay, he hailed a waterman, but on descending the steps slipped, fell, and was injured.

**HELD**—that the accident did not arise out of and in the course of his employment.

**KELLY v. OWNERS OF SHIP "FOAM QUEEN,"** [3 B. W. C. C. 113—C. A.]

**58. Frost-bite—Journeyman Baker Driving Cart on Rounds—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1.]—The applicant was a journeyman baker, whose duty it was to drive his employer's cart and deliver bread to customers. On a very cold day, while out with the cart, his right hand, from which he had taken off the glove in order to give change, was frost-bitten, and this incapacitated him for work.

**HELD** (Moulton, L.J., dissenting)—that the applicant had not suffered injury by accident arising out of his employment.

**WARNER v. COUCHMAN,** [1910] W. N. 266; 27 [T. L. R. 121; 55 Sol. Jo. 107—C. A.]

**59. Accident on Employers' Premises before Commencement of Work—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1.]—The applicant, a collier, who was employed at the respondents' colliery, in order to get to his work had to pass through an iron gate which was on the respondents' premises, and which was one hundred yards from the lamp room where the applicant had first to go. While the applicant was passing through the iron gate it slammed and caught and injured him.

**HELD**—that the accident arose out of and in the course of the applicant's employment.

*Per* Cozens-Hardy, M.R.: Each case must depend upon its own facts as to the reasonable interval of time and space during which a workman's employment lasts. It must not be taken that the protection of the Act extends to workmen on any part of the employers' property.

**HOSKINS v. LANCASTER,** 26 T. L. R. 612; 3 [B. W. C. C. 476—C. A.]

**60. Miner Found Scalded to Death after Leaving Cage at Wrong Level—Question of Fact—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1 (1).]—A miner descending by a cage to his working face, by a mistake landed from the descending cage at a wrong level, and in seeking his way back to his proper road took a wrong turning, and proceeded along the road to which that wrong turning gave him access, for a considerable distance, till he met his death by scalding from the exhaust of a steam pump which apparently he passed.

The sheriff-substitute, acting as arbiter, found, as facts, the course of the man's wanderings in the mine, and held that the claimants, the man's dependants, had failed to prove that the deceased met his death by accident arising out of and in the course of his employment.

**HELD**—that the question was a pure question of fact, but that the arbiter had no evidence before him from which he could properly hold that the miner was not in the course of his employment, and answered the question in the negative.

Rule laid down in *Mackinnon v. Miller* ([1909] S. C. 373) and *Low or Jackson v. General Steam Fishing Co., Ltd.* ([1909] A. C. 523) followed.

**SNEDDON AND OTHERS v. GREENFIELD COAL [AND BRICK CO., LD.]** [1910] S. C. 362; 47 Sc. L. R. 337; 3 B. W. C. C. 557—Ct. of Sess.]

**61. Breach of Employers' Regulations—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1, sub-s. 2 (c).]—A workman proceeding to his home by a route that he was permitted to use in going to and from his work committed a breach of his employers' regulations by attempting to get on a moving tram, in order to be carried up an incline which was on the way to his home. He fell and was killed.

# I. Liability of Master for Injury to Servant— *Continued.*

**HELD**—that the workman was needlessly and improperly exposing himself to risk by his act, and that the accident which occurred to him did not “arise out of and in the course of” his employment.

*Morrison v. Clyde Navigation Trustees* (1908), 46 Sc. L. R. 40) and *Brice v. Edward Lloyd, Ltd.* (*supra*) approved and followed.

*Gane v. Norton Hill Colliery Co.* ([1909] 2 K. B. 539) distinguished.

**POPE v. HILL'S PLYMOUTH CO., LD.**, 102 L. T. [632 : 3 B. W. C. C. 339—C. A.]

**62. Boy in Mine Riding on Tub Contrary to Rule—Fatal Injury—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1 (1), (2) (c).]—A boy in a colliery in order to get to the place where he was about to work got into an empty tub which was being hauled on an endless chain, and while so riding in the tub received fatal injuries through his head striking the roof. A rule of the colliery prohibited boys in the mine from riding in empty tubs. There was a notice to this effect in the colliery, and fines were inflicted on boys found breaking the rule. But the boys frequently did ride in the tubs when they could do so without being caught.

**HELD** (Moulton, L. J., dissenting)—that the accident did not arise out of the boy's employment.

*Brice v. Edward Lloyd, Ltd.* (*supra*) followed. **BARNES v. NUNNERY COLLIERY CO., LD.**, [1910] W. N. 248; 45 L. J. N. C. 757—C. A.]

**63. Miner Using Improper and Dangerous Means of Exit—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1.]—A miner who was making his way home from the pit, instead of taking the recognised exit provided by the mine-owners for the use of their men, proceeded by a steep and very rough, and in wet weather very slippery, track, down the side of a waste-heap. Near the foot of the slope, and while still on his employer's premises, he slipped and was fatally injured. The use of this route was neither sanctioned nor expressly prohibited by the mine-owners, and involved, as the deceased must have known, considerable danger. On these facts the sheriff-substitute, acting as arbiter, found that the accident to the deceased did not arise out of and in the course of his employment.

**HELD**—that there was evidence on which the arbiter might properly find as he did.

**HENDRY (SIMPSON'S EXECUTRIX) v. UNITED [COLLIERIES, LD.]**, [1910] S. C. 709; 47 Sc. L. R. 635; 3 B. W. C. C. 567—Ct. of Sess.]

**64. Servant Operating a Machine at which He was Not Employed—Factory Rules—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1.]—A boy employed in the respondent's boot factory was engaged at work upon a machine in the upper storey. The hands were forbidden to change from one machine to another. An imperfectly moulded insole was brought up amongst others to the finishing-room from the

ground floor. An overseer directed the applicant to bring the insole downstairs and have it remoulded. The applicant had not been expressly forbidden to touch the moulding machine. The operator in charge of this machine was temporarily absent. The applicant did not wait for his return, but attempted to remould the sole himself and, in doing so, received injuries which resulted in the loss of three fingers. The county court judge found that the accident did not arise out of and in the course of his employment.

**HELD**—that there was no evidence upon which he was entitled so to find, and that such disobedience as was found did not *per se* prevent the act of the applicant from being an act done in the course of his employment, and that, therefore, he was entitled to compensation under the Workmen's Compensation Act, 1906.

**TOBIN v. HEARN**, [1910] 2 I. R. 639; 44 [I. L. T. 197—C. A., Ireland.]

**65. Street Accident to Salesman in the Course of his Employment—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1 (1).]—A salesman and collector, while riding in a street upon a bicycle, in the course of his employment, was kicked on the knee by a passing horse and injured.

**HELD**—that the injury was caused by an accident “arising out of” his employment.

**MCNEICE v. SINGER SEWING MACHINE CO., LD.** [48 Sc. L. R. 15—Ct. of Sess.]

**66. Employment Ended—Further Employment Promised—Accident to Workman on his Way to Further Employment—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1 (1).]—A workman was engaged to load a van, and was promised employment in unloading it at another place if he would be there by the time the van arrived. He agreed to be there, and started on his bicycle, but on the way met with an accident.

**HELD**—that there were two separate and distinct employments, that one had ended and the other had not begun, and therefore that accident did not arise out of and in the course of his employment.

**PERRY v. ANGLO-AMERICAN DECORATING CO.**, [3 B. W. C. C. 310—C. A.]

## (1) Practice.

### (1) Appeals and New Trials.

[No paragraphs in this vol. of the Digest.]

### (2) Costs.

**67. Costs of Arbitration—Assessment of Lump Sum—Jurisdiction of County Court Judge—Appeal—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1, Sched. II., 4, 7—*Workmen's Compensation Rules, 1907*, r. 61 (1)—*R. S. C., Ord. 65, rr. 1, 23.*]—Having regard to the words “shall be taxed” in Sched. II. (7) to the Workmen's Compensation Act, 1906, the county court judge has no jurisdiction to order payment of a lump sum as the costs of an arbitration under that Act, and the words of Sched. II. (4), “where” the county court judge

# I. Liability of Master for Injury to Servant— Continued.

"makes any order under this Act," render such an order the subject of appeal to the Court of Appeal.

**BEADLE v. OWNERS OF SHIP "NICHOLAS,"** [1909] W. N. 227; 101 L. T. 586; 3 B. W. C. C. 102—C. A.

**68. Costs of Arbitration—Taxation at Termination of Hearing—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. II.* (7).]—The proper officer of the Court may tax the costs of an arbitration under the Workmen's Compensation Act, 1906, immediately at the termination of the hearing.

**GARDNER v. COX**, 3 B. W. C. C. 245—C. A.

**69. Employers' Costs on Interlocutory Appeal—Workman's Costs in Arbitration—Set-off—Jurisdiction—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. II.* (7).]—A county court judge has no jurisdiction to set off costs awarded to an employer on an interlocutory appeal by the Court of Appeal against the costs of the workman in the subsequent arbitration, unless the Court of Appeal order that the costs awarded to the employer on appeal shall be the employer's costs in the arbitration in any event.

**SUTTON v. GREAT NORTHERN RY. CO.** (No. 2), [3 B. W. C. C. 160—C. A.]

**70. Notice of Submission to an Award—Ambiguous Submission—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *s.* 2 (7); *Workmen's Compensation Rules, 1907*, 18 (5) *c. & 10.*]—An injured workman, in receipt of 1s. per week, applied for a review under *Sched. I.* (16) of the Workmen's Compensation Act, 1906. The employer denied liability, and in the alternative submitted to an award of 5s. weekly. After the opening of the case the 5s. was unconditionally offered to the applicant and accepted. The county court judge held that the terms of the respondent's denial and submission were ambiguous, and therefore ordered the respondent to pay all the costs up to and including those of the hearing.

**HELD**—that the judge had exercised his discretion in the matter, and the Court would not interfere with his decision.

**NICHOLSON v. THOMAS**, 3 B. W. C. C. 452—C. A.

## (3) Arbitration.

See also No. 45, *supra*.

**71. Arbitration Proceedings before County Court Judge—Discovery—Jurisdiction of Registrar to Order Interrogatories—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. II.* (4)—*Workmen's Compensation Rules, 1907*, *rr.* 27, 61.]—In arbitration proceedings under the Workmen's Compensation Act, 1906, the registrar of a county court has no jurisdiction to make an order for discovery or for leave to deliver interrogatories.

**SUTTON v. GREAT NORTHERN RY. CO.**, [1909] 2 K. B. 791; 79 L. J. K. B. 81; 101 L. T. 175; 2 B. W. C. C. 428—C. A.

**72. Duty of County Court Judge to Take Note—Workmen's Compensation Rules, 1907**, *r.* 34.]—It is the duty of the county court judge in an arbitration under the Workmen's Compensation Act, 1906, to take a full note of the evidence and of any question of law raised, even although no request is made to him to do so.

**RAYMAN v. FIELDS**, 102 L. T. 154; 26 T. L. R. [274; 3 B. W. C. C. 119—C. A.]

**73. Duty of Judge to Take Note—Workmen's Compensation Rules, 1907**, *r.* 34.]—It is the duty of a county court judge, sitting as arbitrator under the Workmen's Compensation Act, to take a note, whether he is requested to do so or not.

**TURNER AND OTHERS v. MILLER & RICHARDS**, [3 B. W. C. C. 305—C. A.]

**74. Particulars as to "Nature of Injury"—Effects of Injury Inaccurately Stated—Amendment of Particulars—Workmen's Compensation Rules, 1907**, *r.* 96, *Form 1.*]—A workman stated in his particulars that the effect of an accident was a rupture on the left side. The county court judge, sitting with a medical assessor, found that he never had been ruptured but that there had been disabling effects of the accident of which no mention had been made in the particulars. The workman then applied for leave to amend his particulars to include those effects. The judge refused and made an award in favour of the respondents.

**HELD**—that the workman was only required to state the nature of his injury, and that where there was a mere technical misdescription of the effects no amendment was needed.

**SIDNEY v. COLLINS, SON & CO.**, 3 B. W. C. C. [433—C. A.]

**75. Evidence—Admissibility—Statements of Deceased Workman—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *s.* 1.]—In a claim for compensation, under the Workmen's Compensation Act, 1906, by the dependant of a deceased workman, statements alleged to have been made by the workman in the absence of his employer shortly before his death are not admissible as evidence of the occasion and cause of the injury from which the workman suffered.

**GILBEY v. GREAT WESTERN RY. CO.**, 102 L. T. [202; 3 B. W. C. C. 135—C. A.]

**76. Evidence—Medical Referee.]—A medical referee should not be sworn and examined as a witness.**

**HUGO v. H. W. LARKINS & CO.**, 3 B. W. C. C. [228—C. A.]

See S. C. under I. 1 (a), *supra*.

**77. Arbitration Under Workmen's Compensation Act, 1906—False Evidence—Judicial Proceeding—Perjury at Common Law—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *s.* 1, *sub-s.* 3, *Sched. II.*, *ss.* 1—4—*Workmen's Compensation Rules, 1907*, *Nos.* 2 (1), 27 (1) and 81.]—An arbitration before a county court judge under sect. 1, *sub-sect.* 3, of the Workmen's Compensation Act, 1906, is a judicial proceeding, and the wilful and corrupt giving of



**I. Liability of Master for Injury to Servant—***Continued.*

false evidence at such a proceeding is perjury at common law.

**R. v. CROSSLEY**, [1909] 1 K. B. 411; 78 L. J. [K. B. 299; 100 L. T. 463; 73 J. P. 119; 25 T. L. R. 225; 53 Sol. Jo. 214; 22 Cox, C. C. 40—C. C. A.]

**(m) Redemption of Payment.****[No paragraphs in this vol. of the Digest.]****(n) Registration of Agreement.**

**78. Award by Committee — Lump Sum—Refusal to Record Award—Infant—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. II.* (1), (9).]—The words "a committee representative of an employer and his workmen," in *Sched. II.* (1) of the Workmen's Compensation Act, 1906, do not mean that each individual workman must have agreed to refer disputes under the Act to such committee.

In considering whether the award of a committee, representative of an employer and his workmen, ought to be recorded under *Sched. II.* (9) of the Act, it is necessary to ascertain whether the matter dealt with by the committee is one which under the Act is to be settled by arbitration. If it falls within that category, the award has to be recorded and is not capable of being modified or set aside by the county court judge; but if the matter is outside the jurisdiction of the committee there is no right to record the award, and the county court judge has the right to review it.

As, apart from the compensation payable in case of death, a workman cannot require the payment of a lump sum to be settled by arbitration under the Act, the committee has no jurisdiction on his application to award a lump sum. If the committee does award a lump sum, a memorandum thereof cannot be recorded under *Sched. II.* (9).

*Semble*, an infant is bound by the award of a committee acting under the Act.

**MULHOLLAND v. WHITEHAVEN COLLIERY CO.**, [1910] 2 K. B. 278; 79 L. J. K. B. 987; 102 L. T. 663; 26 T. L. R. 462; 3 B. W. C. C. 317—C. A.]

**79. Jurisdiction of County Court Judge—No Power to Increase Agreed Sum without Consent—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. II.* (9) (*d.*).]—On an application to register a memorandum of agreement to pay compensation the judge has no power to alter the amount and to treat that agreement as a submission by the employer to pay any sum the judge may think reasonable.

**Mortimer v. Secretan** ([1909] 2 K. B. 77) followed.

*Semble*, such jurisdiction may be given by consent, but the consent must be clearly so expressed and should be mentioned in the award.

**HALLS v. FURNESS, WITBY & CO.**, 3 B. W. [C. C. 72—C. A.]

**80. Recorded Agreement—Default in Payment—Application for Leave to Issue Execution—Evidence of Capacity to Work—Admissibility—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. II.* (9)—*Workmen's Compensation Rules, 1907*, r. 67 (1), (2).]—Employers ceased weekly payments under a recorded agreement to pay compensation during incapacity. Thereupon the workman applied in the county court for leave to issue execution. The employers, who appeared, tendered evidence to show that the workman was no longer incapacitated at the date when the payments ceased. This evidence was held to be inadmissible, and leave was granted to the workman to issue execution.

**HELD**—that the evidence tendered was admissible to show that there had been no default.

*Quere*, whether such an application for leave to issue execution can be made *ex parte*.

**IBRAHIM SAID v. J. H. WELSFORD & CO., LD.**, [3 B. W. C. C. 233—C. A.]

**81. Workman Returning to Work at Higher Wages—Dismissal—Agreement Recorded on Conditions—Competency—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. II.* (9) (*b.*).]—A workman who met with an accident resulting in incapacity received compensation from his employers under an unrecorded agreement under the Workmen's Compensation Act, 1906, for some months, and afterwards returned to his former work and earned higher wages than before the accident. Some weeks later he was dismissed on a reduction of the staff. Thereafter, while he was still unemployed though not incapacitated, he presented an application for warrant to record the memorandum of agreement. The sheriff-substitute granted warrant on certain conditions.

**HELD**—that the sheriff-substitute was entitled, in virtue of para. 9 (*b.*) of the second schedule of the Act, to impose conditions to the granting of the warrant.

**MATTHEWS v. WILLIAM BAIRD & CO., LD.**, [1910] S. C. 689; 47 Sc. L. R. 627; 3 B. W. C. C. 566—Ct. of Sess.]

**82. Report by Medical Practitioner Mutually Agreed Upon that Workman has Recovered—Bar—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. II.* (9).]—An injured workman received compensation under the Workmen's Compensation Act, 1906, in virtue of an unrecorded agreement. The employers discontinued the weekly payments on the ground that the workman had recovered. A medical practitioner to whom the parties referred the question reported on March 31st, 1909, that he was quite fit for his former duties or any ordinary work. On August 12th, 1909, the workman lodged a memorandum of the agreement with the sheriff-clerk to be recorded, and the employers objected to the recording in respect of the medical report.

**HELD**—that the application for recording of the agreement was barred by the reference to

### I. Liability of Master for Injury to Servant— *Continued.*

the medical man and his award thereon, and that the memorandum ought not to be recorded.

**MCAUGHTON AND SINCLAIR v. CUNNINGHAM**, [1910] S. C. 980; 47 Sc. L. R. 781; 3 B. W. C. C. 576, 577—Ct. of Sess.

#### (o) Reviewing Award.

*See also* No. 70, *supra*.

**83. Minor—Probable Earnings after Attaining Twenty-one—Increase of Weekly Payment—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. I.* (16).—In July, 1907, the applicant, being then under twenty-one years of age, was engaged by the respondents as a labourer at 22s. per week. Prior to this he was a stove-grate fitter, and he only went to the respondents as a labourer because he was short of work in his own trade. While in the respondents' service he met with an accident to his right arm, and in respect thereof compensation was made to him at 11s. 4d. per week. In February, 1909, he had so far recovered that he was able to do light work found for him by the respondents at the same rate of wages as he had received before the accident. The compensation was thereupon reduced to 1d. per week. In August, 1909, the applicant, being then twenty-one, applied for a review of the award, and claimed that he would have been earning more than the old rate of wages had it not been for the accident. Upon that application the county court judge came to the conclusion that the proviso to sect. 16 of the First Schedule to the Workmen's Compensation Act, 1906, applied, and he decided in favour of the applicant that he would be able to earn as a stove-grate fitter 30s. a week; he accordingly made an award that the 1d. per week be increased to 7s. 6d. per week until further review.

**HELD**—that the words, "the weekly sum which the workman would probably have been earning" in the proviso to clause 16 of Sched. I. to the Workmen's Compensation Act, 1906, are not limited to what the workman would probably have been earning in the employment of the same employer, and that the county court judge had come to a right conclusion.

Decision of C. A. ([1910] W. N. 41; 79 L. J. K. B. 417; 102 L. T. 199; 26 T. L. R. 275; 3 B. W. C. C. 126) affirmed.

**VICKERS, SONS AND MAXIM, LD. v. EVANS**, [1910] A. C. 444; 79 L. J. K. B. 954; 103 L. T. 292; 26 T. L. R. 548; 54 Sol. Jo. 651; 3 B. W. C. C. 403—H. L.

**84. Minor—Returning to Work at Same Wages—Probable Earnings—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. I.* (3), (16).—The maximum amount of compensation fixed by Sched. I. (3) of the Workmen's Compensation Act, 1906, which is referred to in Sched. I. (16), is subject to the proviso in the latter paragraph. So that where a workman who is a minor has been injured and has returned to work at the same wages as before the accident, it is competent for the judge or arbitrator on an application to review an award under Sched. I. (16) to

award a weekly sum not exceeding 50 per cent. of the probable earnings of the workman if he had not been injured.

**EDWARDS v. ALYN STEEL TINPLATE CO., LD.**, [3 B. W. C. C. 141—C. A.

**85. Minor—Returning to Work at Same Wages—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1 (3), and *Sched. I.* (1) (b), (3), (16).—Where an injured workman, at the date of the accident under twenty-one years of age, returns to work with his employers, the fact that he earns the same wages as before the accident is not necessarily conclusive that the employers are entitled to have the compensation declared at an end, but the arbiter should determine—having in view the workman's age at the time of the accident, and having in view the time that has elapsed since then—whether, on the date at which the employers aver incapacity ceased, the workman's earning capacity was the same as or less than it would have been had he not been injured.

**MALCOLM v. BOWHILL COAL CO. (FIFE)**, [1910] [S. C. 447; 47 Sc. L. R. 449; 3 B. W. C. C. 562—Ct. of Sess.

**86. Application by Workman—Partial Incapacity—Inability to Find Work—No Change in Physical Condition—Workmen's Compensation Act, 1897** (60 & 61 Vict. c. 37), *Sched. I.* (2), (12).—On an application by a workman for review of weekly payments made in respect of partial incapacity, he did not aver any change in his physical condition, but maintained that he must be held in law to be totally incapacitated in respect that his employers were unable to give him suitable light work, and that he was unable to find light employment elsewhere.

**HELD**—that the workman had failed to state any grounds on which the arbiter would be entitled to review the weekly payments.

**BOAG v. LOCHWOOD COLLIERIES, LD.**, [1910] [S. C. 51; 47 Sc. L. R. 47; 3 B. W. C. C. 549—Ct. of Sess.

**87. Application by Workman—Partial Incapacity—Previous Review—No Change in Workman's Condition—Res judicata—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. I.*, ss. 3, 16.—In 1907 a workman lost a finger in the course of his employment and was awarded 15s. a week during incapacity. In May, 1909, on an application by the employers for a review of the weekly payment, evidence was given that the workman was then doing his old work for the employers, but he gave evidence that by reason of the accident he could not after that employment came to an end procure other employment in his trade. Upon this application the county court judge, in June, 1909, held that the respondent's chances of employment were somewhat, though not very materially, reduced by the loss of his finger, and he reduced the weekly payment to 1s. In October, 1909, the workman applied to review this award. At this time his physical condition was the same as in June, but he was able to prove his inability to obtain other employment in consequence of his

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**injury.** The county court judge reviewed the award made in June and increased the weekly payment from 1s. to 15s.

**HELD**—that the doctrine of *res judicata* did not apply, and that it was competent for the county court judge to review the award made in June.

**Per Cozens-Hardy, M.R.**—Although it is competent to review an award in such circumstances, such applications should be jealously scrutinised, and great care must be taken not to allow the fluctuations of the general labour market to justify a review.

Principle laid down in *Sharman v. Holliday and Greenwood, Ltd.* ([1904] 1 K. B. 235) applied.

**RADCLIFFE v. PACIFIC STEAM NAVIGATION Co.,** [1910] 1 K. B. 685; 79 L. J. K. B. 429; 102 L. T. 206; 26 T. L. R. 319; 54 Sol. Jo. 404; 3 B. W. C. C. 185—C. A.

**88. Application by Employer—Ability to Earn—Onus of Proof on Employers—Finding that Workman could do "Light" Work, if He could Obtain it—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. I.* (3).—On an application to diminish a weekly payment the county court judge found that the workman could do some light work, if he could obtain it; but the employer did not produce any evidence that he could obtain such light work. The judge in consequence refused to reduce the weekly payments.

**HELD**—that the employers had not discharged the onus of proof which was upon them.

**PROCTOR & SONS v. ROBINSON,** 3 B. W. C. C. 41 [—C. A.]

**89. Physical Capacity for Work—Deficiency of Will Power caused by Brooding Over Accident—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. I.* (1) (b).—On an application to review and increase a nominal award, the two medical referees of the Court reported that the workman, who had been injured by an admitted accident, was, as regards his physical condition, able to resume his usual occupation as a moulder. As to his mental condition, they reported that he had brooded so much over his accident that his mind would not allow him to summon up courage to persevere at his usual work.

**HELD**—that the county court judge was right in finding that the man was not suffering from any incapacity from work which resulted from the injury, but that his inability to work was caused by brooding over the effects of the accident, and that this was not incapacity within the Act.

**HOLT v. YATES AND THOM,** 3 B. W. C. C. 75—[C. A.]

**90. Workman Refusing to Accept Work Offered by Employer—Conflict of Medical Evidence—Arbitrator Declaring His Inability to Decide as to Capacity for Work—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1 (3).—On an application by the employer for a review of an

award, the county court judge found that the workman honestly believed and acted upon advice given him by two competent doctors, whose *bona fides* was unimpeached, that he was unfit to do the work offered to him by the employer. The employer's doctors said he could do the work. The judge stated that owing to the conflict of medical testimony, he was unable to come to a satisfactory opinion as to whether or not the workman was or was not able to do this offered work, and made his award in favour of the workman.

**HELD**—that the case must be remitted to the judge, calling in a medical referee if necessary to decide the question of the workman's capacity  
**COWAN v. SIMPSON,** 3 B. W. C. C. 4—C. A.

**91. Unreasonable Refusal to Attempt to Do Light Work—Question of Fact—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. I.* (1) (b).—An injured workman was paid compensation for sixty-one weeks by his employers. Subsequently the employers offered the workman light work, which he refused without attempting to do it. The county court judge held that the workman had acted unreasonably in refusing to go and see what the work offered was, and that, if he had accepted the offer and returned to work, by the arbitration he would have been under no disability. He therefore stopped compensation, but made a declaration of liability.

**HELD**—that the decision was on a question of fact, and that there was evidence to support it.

**FURNESS, WITHEY & Co. v. BENNETT,** 3 B. W. C. C. 195—C. A.

**92. Refusal to Continue Work—Physical Ability to Work—Nervous Effects of Accident—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), *Sched. I.* (1) (b), (16).—The county court judge found that an injured workman, after returning to his employment for eighteen months, had refused to continue it, partly from nervousness but partly from reasons unconnected with his physical condition. The judge further found (1) that the refusal to continue work was due to nervousness, which an average reasonable man could overcome; and (2) that the nervousness was the result of the accident.

**HELD**—that, looking at the whole of the judgment, the judge meant to find that the man was able to work, and that he was right in holding that compensation was no longer due.

**Eaves v. Bluenclydach Colliery Co., Ltd.** ([1909] 2 K. B. 73) distinguished.

**TURNER v. BROOKS AND DOXEY, LD.,** 3 B. W. C. C. 22—C. A.

**93. Incapacity for Work—Employment at Increased Wages by Employers—Dismissal for Misconduct—Application for Compensation—Suspensory Award—Workmen's Compensation Act, 1906, Sched. I.** (1) (b).—A workman was partially incapacitated by an accident, and the injury was permanent, but his employers found him work in another capacity at a higher wage

# I. Liability of Master for Injury to Servant— *Continued.*

than that at which they had employed him before the accident. From this employment he was dismissed by reason of his own misconduct. The workman took proceedings for compensation under the Act from the employers, but the county court judge made his award in favour of the employers on the ground that the workman's incapacity was due to his own misconduct. The workman had asked for substantial compensation and did not ask for a suspensory award of 1*l.* a week.

HELD—that the workman was at present able to earn in some suitable employment, and was out of work through his own misconduct, and that as on the hearing the employers offered to submit to an award of 1*l.* a week, an order to that effect should be made.

*Clarke v. Gas Light and Coke Co.* ( (1905) 21 T. L. R. 184) considered.

HILL v. OCEAN COAL CO., LD., 3 B. W. C. C. [29—C. A.

94. *Injury to Knee—Necessity of Bandage—Ability to Work—Recovery—Question of Fact—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *Sched. I.* (15), (16).—A brusher in a mine, who had sustained an injury to his knee, was paid compensation down to April 9th, 1909, when his employers stopped payment on the ground that he had recovered. On May 13th, 1909, the workman was examined by a medical referee, who reported that, with the exception of a certain thinning of the muscular tissue of the knee joint (due to the prolonged use of an elastic bandage), the effect of the injury had passed off. On June 4th, 1909, the cartilage of the knee again became loose, requiring the knee to be bandaged again, in consequence of which the workman was off work for a day. In a claim at the instance of the workman against his employers, the arbiter (after finding that this condition of the knee would be likely to recur if the workman did not wear an elastic bandage) found that if he wore a bandage he would be able to resume his original work as a brusher, and ended the compensation as from August 13th, 1909, down to which date he found him entitled to it.

HELD—that the question whether the workman had recovered or not was a question of fact, and that, as there was evidence before the arbiter entitling him to find as he did, the appeal was incompetent and must be dismissed.

ANDERSON v. DARGAVIL COAL CO., LD., [1910] [S. C. 456; 47 Sc. L. R. 342—Ct. of Sess.

95. *Suspensory Award—Application by Employer to Terminate—Permanent Injury—Workman Receiving Same Wages as before Accident—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *Sched. I.* (16).—On an application by an employer to terminate weekly payments of 1*l.* a week, where the workman has returned to work at his former wages, the question is not whether the man's employers are paying him or should pay him at the time of the application the same wages as before the accident, but

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whether the man is left in such a position that in the open market his earning capacity may, as the result of the accident, in future be less than it was before the accident.

BIRMINGHAM CABINET MANUFACTURING CO. [v. DUDLEY, 102 L. T. 619; 3 B. W. C. C. 169—C. A.

96. *Nominal Award—Competency—Scottish Practice—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), *Sched. I.* (12).—In an application by an employer for review of a weekly payment to a workman, the medical referee, whose report the parties had of consent agreed to accept, reported that the workman while able for his ordinary work was still suffering from ruptures caused by the accident which might prove detrimental to him in the future.

HELD—that it was incompetent to make a nominal award of 1*l.* a week so as to keep the question of compensation open, and compensation terminated.

*Clelland v. Singer Manufacturing Co.* ( (1905) 7 F. (Ct. of Sess.) 975) followed and approved.

*Owners of Vessel "Trynion" v. Morgan* ([1909] 2 K. B. 66) disapproved.

Opinions (*per* Lords Low and Skerrington) that the proper course was to sist procedure, with leave to either party to renew the application in the event of a change of circumstances occurring.

Opinion (*per* the Lord President) that the medical referee's report, while conclusive as to the workman's physical condition, was not conclusive as to his wage-earning capacity, and that it would have been competent for the workman to have tendered evidence that the wage-earning capacity of a ruptured man was less than his capacity before the accident, and that on that evidence the sheriff might have come to a conclusion.

ROSIE v. MACKAY, [1910] S. C. 714; 47 Sc. L. R. [654—Ct. of Sess.

97. *Prospective Order—Award Terminating at Future Date—Jurisdiction of Arbitrator—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *Sched. I.* (16).—In exercising the power to review a weekly payment which is conferred by *Sched. I.* (16) of the Workmen's Compensation Act, 1906, it is not competent for the county court judge to make a prospective award, inasmuch as his function in awarding compensation is confined to ascertaining what is the workman's earning capacity at the time of the application to review, and he is not entitled to pronounce a judgment beforehand the validity of which would depend on the workman's condition at a future date.

*Allan v. Thomas Spowart & Co., Ltd.* ((1906) 8 F. 811) approved and followed.

BAKER v. JEWELL, [1910] 2 K. B. 673; 79 [L. J. K. B. 1092; 103 L. T. 173; 3 B. W. C. C. 503—C. A.

98. *Weekly Payment Reduced as from Past Date—Intermediate Payments of Full Amount—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *Sched. I.* (19).—A workman was injured



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in the course of his employment, and in respect thereof a weekly payment of 14s. 7d. was agreed to be paid as compensation. An application was subsequently made to review this payment as from February, 1910, and in June, 1910, the county court judge reduced the weekly payment to 10s., as from February. The weekly sum of 14s. 7d. was paid to the workman until the order for the reduced payment was made in June. The 10s. a week not having been paid, the workman applied for liberty to issue execution.

**HELD**—that although the employer might have a right to recover from the workman the amount overpaid as from February, those overpayments could not be regarded as a payment in respect of the reduced amount ordered to be paid, and, therefore, that the employer was liable to pay the 10s. a week.

*Hosegood & Sons v. Wilson*, [1911] 1 K. B. [30; [1910] W. N. 242; 103 L. T. 616; 27 T. L. R. 88—C. A.]

**99. Injured Finger-tip still Slightly Tender—Termination of Compensation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1) (b).**—A workman injured one finger in July, 1909, and compensation was paid under a registered agreement. On November 26th, 1909, the workman admitted to the employers' doctor that he was able to work, but on January 17th, 1910, when the employers applied to terminate the agreement, the tip of the finger was still slightly tender. The arbitrator terminated the compensation.

**HELD**—that the decision was on a question of fact, and there was evidence to support it; and that it was not a proper case for a suspensory award.

*Goodall and Clarke v. Kramer*, 3 B. W. C. C. [315—C. A.]

**100. Allowance in Compensation for Fares and Lodging—Family Move and Join the Workman—Change of Circumstances—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (16).**—A workman was in receipt of 17s. 5d. a week compensation. His employers then gave him light work at Cardiff, some miles from his home, and filed an application to review. The county court judge reduced the payments to 13s. a week; in arriving at this figure he allowed the man 4s. 6d. for a week-end ticket and lodging allowance, as he had to live apart from his family during the week. The family then came to live in Cardiff, and the employers filed a further application to reduce on the ground of this change of circumstances. The judge then reduced the payments by a further 2s.

**HELD**—the decision was on a question of fact, and the Court would not interfere.

*Taff Vale Railway Co. v. Lane*, 3 B. W. C. C. [259, 297—C. A.]

**101. Recovery of Workman—Question of Fact—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (16).**—In an application by employers for review, the arbiter found as a fact

that the workman was fit to resume his former work, or to undertake any other form of labour conducted on the level of the ground; that in the meantime it would not be safe for him to climb ladders or steps (as his duties occasionally involved his doing), since from want of use, combined with the effect of the accident, his left leg was weaker than the right; that the best treatment for the left leg was the immediate resumption of such work as the workman was capable of. On these findings the arbiter ended the compensation.

**HELD**—that the question whether the workman had or had not recovered was a question of fact, and that the arbiter's finding could therefore not be interfered with.

*Anderson v. Darnagvil Coal Co., Ltd.* (*supra*), followed.

*McNaughton and Sinclair v. Cunningham*, [1910] S. C. 980; 47 Sc. L. R. 781; 3 B. W. C. C. 576, 577—Ct. of Sess.

**102. Recovery of Workman—Termination of Weekly Payments—Supervening Incapacity—Fresh Application by Workman—Competency—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (12).**—Where the sheriff has already found that a workman's incapacity has ceased, and has terminated the weekly payments, an application by the workman for compensation on the ground of supervening incapacity, caused through the injury sustained by him, is incompetent.

*Cadenhead v. Ailsa Shipbuilding Co., Ltd.*, [47 Sc. L. R. 784; 3 B. W. C. C. 581—Ct. of Sess.]

### (p) Serious and Wilful Misconduct.

**103. "Serious and Permanent Disablement"—Loss of Top Joints of Two Fingers of Right Hand—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (2) (c).**—A boy, in disobedience to orders, was cleaning a machine in motion; his right hand was drawn into the machine, and the top joints of the first and third fingers torn off. The county court judge held that the injury was attributable to the serious and wilful misconduct of the workman, but that it resulted in serious and permanent disablement, and he therefore awarded compensation.

**HELD**—that the injury resulted in permanent disablement, and that there was evidence to support the finding that the disablement was serious.

*Hopwood v. Olive and Partington, Ltd.*, [102 L. T. 790; 3 B. W. C. C. 357—C. A.]

**104. Breach of Rule—Prima facie Evidence of Misconduct—Fact or Law—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1 (2) (c).**—While the breach of a rule does not *per se* infer serious and wilful misconduct, it is yet such *prima facie* evidence of misconduct as, taken with the facts found proved, may justify an arbiter's finding of serious and wilful misconduct, which is a finding in fact and not in law. *Donnachie v. United Collieries, Ltd.*, [1910] S. C. 503; 47 Sc. L. R. 412—Ct. of Sess.

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**105. Miner Crossing Shaft Bottom—No Special Rule—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1 (2) (c).—A miner in order to get a screw key wherewith to repair a breakdown in the pit, the repair of which was a matter of some urgency, was crossing the bottom of the shaft instead of going round by the "Boutgate" or by-pass provided for the purpose, when he was injured by the cage descending unexpectedly. The shaft bottom was regarded as notoriously dangerous, but there was no special rule prohibiting miners from crossing it.

In a claim by the miner for compensation, the arbiter found that the claimant had been guilty of serious and wilful misconduct.

**HELD**—that there was evidence on which the arbiter might properly find as he did.

**LEISHMANN v. WILLIAM DIXON, LD.**, [1910] [S. C. 498; 47 Sc. L. R. 410; 3 B. W. C. C. 560—Ct. of Sess.

## (q) Sub-contracting, etc.

**106. Work "undertaken" by Principal—Skating Rink Venture by Tradesmen—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 4.—The respondents, two shopkeepers and the keeper of a billiard saloon, were minded to join together in running a skating rink. They bought an existing iron structure and made a contract with one H. for its removal and re-erection. The applicant, while employed on this work by H., was injured by accident, and in respect of his injuries he claimed compensation from the respondents.

**HELD**—that the work in which the applicant was injured was not undertaken in the course of or for the purposes of the respondents' trade or business and that therefore they were not liable to pay compensation.

**SKATES v. JONES & CO.**, [1910] 2 K. B. 903; [79 L. J. K. B. 1168; 103 L. T. 408; 26 T. L. R. 643; 3 B. W. C. C. 460—C. A.

## (r) Workman and Employer.

**107. Professional Football Player—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), ss. 1, 13.—The applicant was engaged by the Crystal Palace Football Company, Ltd., as a professional football player at a weekly wage, and he agreed to give his whole time to the club, to attend regularly to training, and to observe the training and general instructions of the club. While playing in a football match the applicant met with an accident which incapacitated him from earning wages in any suitable employment.

**HELD**—that the applicant was a "workman" within the definition in sect. 13 of the Workmen's Compensation Act, 1906, and that he was entitled to compensation.

**WALKER v. CRYSTAL PALACE FOOTBALL CLUB**, [1910] 1 K. B. 87; 79 L. J. K. B. 229; 101 L. T. 615; 26 T. L. R. 71; 54 Sol. Jo. 65; 3 B. W. C. C. 53—C. A.

**108. Fisherman—Remuneration by Share in Profits—Guaranteed Weekly Wage—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 7 (2).—

A member of a crew of a fishing vessel whose remuneration is a share in the profits, but who is guaranteed a certain minimum weekly wage in the event of his share not amounting to that sum, is remunerated by a share of profits within sect. 7 (2) of the Workmen's Compensation Act, 1906, and is, consequently, outside the Act.

**ADMIRAL FISHING CO. v. ROBINSON**, [1910] [1 K. B. 540; 79 L. J. K. B. 551; 102 L. T. 203; 26 T. L. R. 299; 54 Sol. Jo. 305; 3 B. W. C. C. 247—C. A.

**109. Music Teacher—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.—*Per* Cozens-Hardy, M.R.—A skilled music teacher who gives lessons to a pupil, either in his own house or in the pupil's house, cannot be regarded for the purposes of the Workmen's Compensation Act, 1906, as the "workman" and the pupil as the "employer."

**SIMMONS v. HEATH LAUNDRY CO.**, [1910] 1 [K. B. 543; 79 L. J. K. B. 395; 102 L. T. 210; 26 T. L. R. 326; 54 Sol. Jo. 392; 3 B. W. C. C. 200—C. A.

See S. C. under I. 1 (d) (2), *supra*.

**110. Police Constable Acting as Fireman—Police Act, 1893** (55 & 57 Vict. c. 10), s. 1—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 13.—When a police constable acts as a fireman in pursuance of any duty under an Act of Parliament, he is acting as a member of a police force, and is not a "workman" within the meaning of sect. 13 of the Workmen's Compensation Act, 1906.

**SUDELL v. BLACKBURN CORPORATION**, 3 B. W. [C. C. 227—C. A.

**111. Taxicab Driver—Remuneration by Share of Takings—Absence of Control—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.—Taxi-cab drivers who obtained cabs from the respondents were paid by a percentage of their daily takings. When they left the respondents' yard each day with the cabs they went where they pleased. It was admitted that except by refusing to let a driver have a cab the next time he applied for one the respondents had no control over the drivers and could not dismiss them. A driver having, while endeavouring to start the engine of one of the respondents' cabs, received injuries, from the effects of which he died, his widow claimed compensation under the Workmen's Compensation Act, 1906.

**HELD**—that the legal relation of the respondents and the driver was not that of master and servant, and therefore that the respondents were not liable to pay compensation under the Act.

**DOGGETT v. WATERLOO TAXI-CAB CO., LD.**, [1910] 2 K. B. 336; 79 L. J. K. B. 1085; 102 L. T. 874; 26 T. L. R. 491; 54 Sol. Jo. 541; 3 B. W. C. C. 371—C. A.

**112. Taxicab Driver—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.—A taxicab driver occasionally took a cab for the day from

### I. Liability of Master for Injury to Servant— *Continued.*

the respondents' yard. He agreed to pay 75 per cent. of his receipts to the respondents and accepted conditions as to the purchase of petrol and the wearing of a uniform. There was little or no control exercised over him though the words "servant" and "dismissal" occurred on notices issued by the owners to the drivers and to the public.

**HELD**—that the contract between the parties was not one of service, and consequently the driver was not a workman within the meaning of the Act.

*Doggett v. Waterloo Taricah Co., Ltd.* (*supra*) followed.

**BATES-SMITH v. GENERAL MOTOR CAB CO.,**  
[L.D. 3 B. W. C. C. 500—C. A.]

**113. Master and Owner of Vessel—"Contract of Service"—"Thirds" or Sharing System—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.]—A vessel was sailed on the "thirds" or sharing system, under which the owner took one-third of the gross freights, the master taking the other two-thirds. The owner found the vessel and gear, and paid for repairs and oil for the lights. The master engaged what crew he pleased, victualled the vessel, and paid the crew and harbour dues, making what contracts he thought fit to take cargo to any place he pleased.

**HELD**—that there was no contract of service between the owner and master within the meaning of sect. 13 of the Workmen's Compensation Act, 1906.

**BOON v. QUANCE.** 102 L. T. 413; 3 B. W. C. C. [106—C. A.]

**114. Master of Small Vessel Paid by Two-thirds of the Gross Receipts—No Evidence Given by Owners—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 1 (1), 13.]—The dependants of the master of a small vessel claimed compensation for his death. The man's widow said that he was the servant of the owners, and she produced books showing that he received two-thirds of the gross receipts out of which he paid the ship's disbursements and expenses. The owners called no evidence as to the relationship between the master of the vessel and themselves.

**HELD**—that on these facts there was evidence to support the finding of the county court judge that a contract of service existed between the master and the owners.

*Boon v. Quance* (*supra*) distinguished.  
**JONES v. OWNERS OF S. "ALICE AND ELIZA."**  
[3 B. W. C. C. 495—C. A.]

**115. Co-Owner of Ship Employed as Master by Managing Owner—Right of Master's Dependents to Recover Compensation from Managing Owner—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.]—A person who owned ten sixty-fourth shares of a trading schooner was employed as master by the managing owner, and met his death while in the course of his employment.

**HELD**—in the absence of any proof of partnership or joint-adventure in a course of trading,

that the master was a "workman" and his dependants were entitled to recover compensation from the managing owner.

*Ellis v. Ellis & Co.* ([1905] 1 K. B. 324) distinguished.

**SHARPE v. CARSWELL,** [1910] S. C. 391; 47 Sc. [L. R. 335; 3 B. W. C. C. 552—Ct. of Sess.]

**116. Coal Trimmer—Ship-Agents—Regulations of Leith Dock Commissioners Regarding Loading of Coal—Squad of Coal Trimmers with Head Man Selected by Commissioners—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.]—Circumstances were held that a member of a squad of coal trimmers, who had received injuries by accident arising out of and in the course of his employment in Leith Docks, was not employed by the Leith Dock Commissioners, nor by the head of the squad to which he belonged, nor by the registered owners of the ship, but was in the employment of the agents for the ship at Leith.

**FORMAN v. GIBSON & CO.,** [1910] S. C. 317; 47 [Sc. L. R. 394—Ct. of Sess.]

**117. Letter Fixer—Canvassing for Orders—Workman or Independent Contractor—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.]—A., a letter fixer, claimed compensation under the Workmen's Compensation Act, 1906, from a firm of enamel letter makers from whom he frequently obtained work, and at whose place of business he was in the habit of calling regularly, with a view to obtaining employment. A. was in no way precluded from accepting work from others, and might refuse any particular job offered him. He occasionally canvassed among shopkeepers to fix letters on behalf of the firm, and where he did so was paid only in respect of the orders he received. He was paid by the piece, and had to pay his own expenses. The arbiter found that the claimant was a "workman" within the meaning of sect. 13 of the Act, and not an independent contractor.

**HELD**—that the Court could not interfere with the arbiter's finding, as the facts entitled him to draw the inference that A. was a "workman" within the Act.

**TAYLOR v. BURNHAM & CO.,** [1910] S. C. [705; 47 Sc. L. R. 643; 3 B. W. C. C. 569—Ct. of Sess.]

**118. Earnings—"Remuneration"—Whether over £250 a Year—Chief Steward on Steamship—Bonus—Profits on Sale of Liquor—Workmen's Compensation Act, 1906** (6 Edw. 7, c. 58), s. 13.]—The chief steward on board a steamship received, in addition to his salary, a bonus of £2 a month, which was described in the accounts as "conditional money," and which was paid to him when the employers were satisfied with his work. He was also supplied by his employers with bottles of whisky at 4s. each, which he retailed at 6d. a glass, making a profit on each bottle sold, which he was entitled to keep for himself.

**HELD**—that the bonus and the profit realised on the sale of bottles of whisky must be taken into account in considering the amount of the

# I Liability of Master for Injury to Servant— *Continued.*

chief steward's "remuneration" for the purposes of sect. 13 of the Workmen's Compensation Act, 1906.

SKALES *v.* BLUE ANCHOR LINE, LD., [1910] [W. N. 267; 27 T. L. R. 119; 55 Sol. Jo. 107—C. A.]

119. "Employer"—*Services of a Person Temporarily Lent—Threshing Machine—Road Man—Workmen's Compensation Act* (6 Edw. 7, c. 58), s. 13.]—The respondents were owners of a threshing machine which they let out on hire to farmers. They were bound by statute to have three men to attend the machine, two to look after the engine and a third as a "road man." At farms the road man acted as assistant in the threshing, being paid for this by the farmer and not by the respondents. While engaged in the threshing the applicant was injured.

HELD—that there was evidence to support the county court judge's finding of fact that the respondents were the man's employers and not the farmer.

REED *v.* SMITH, WILKINSON & CO., 3 B. W. C. C. [223—C. A.]

120. "Employer"—*Workman's Wages Paid through a Stevedore—Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. 13.]—A workman was drowned while mooring a ship of the respondents; he was paid by a stevedore, who worked for the respondents and other firms. The respondents contended that he was employed by the stevedore and not by them. The stevedore gave evidence that the money was paid through him merely for the convenience of the respondents. The county court judge held that the man was employed directly by the respondents and not by the stevedore.

HELD—that it was a question of fact, and that there was some evidence to support the county court judge's decision.

POLLARD *v.* GOOLE AND HULL STEAM TOWING [Co., LD., 3 B. W. C. C. 360—C. A.]

## (s) Contracting Out.

121. *Certified Scheme—Jurisdiction—Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. 3.]—A workman agreed that the provisions of a duly certified scheme should be substituted for the provisions of the Workmen's Compensation Act, 1906. The workman having died from lead poisoning, his widow applied for compensation under the Act.

HELD—that the workman, having come into the scheme, was for all purposes outside the provisions of the Act, and therefore, the applicant was not entitled to an award of compensation under the Act.

HORN *v.* LORDS COMMISSIONERS OF THE [ADMIRALTY, [1911] 1 K. B. 24; [1910] W. N. 242; 27 T. L. R. 84—C. A.]

122. *Agreement Subsequent to Injury—Not Assisting Medical Referee—Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. (3) (i).]—An

injured workman made a written agreement with his employers under which he accepted the full compensation due to him under the Act as long as he was totally disabled by the accident. He also agreed that he would submit himself under certain circumstances to the medical referee of the district in the event of any dispute arising as to his fitness for employment, and that if he refused to assist in the application for examination by the medical referee all further rights to compensation in respect to the accident should cease.

HELD—that the penal clause at the end of the agreement was a contracting out of the Act, contrary to sect. 1 (iii).

BRITISH AND SOUTH AMERICAN STEAM NAVIGATION CO., LD. *v.* NEIL, 3 B. W. C. C. 413—C. A.]

## (t) Surgical Operations.

*See also* No. 40, *supra*.

123. *Unreasonable Refusal to Submit to Simple Surgical Operation—Continued Incapacity—Burden of Proof—Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. 1.]—When a workman refuses to submit to an operation, two questions arise. First, Was the refusal unreasonable? Secondly, Is the continued incapacity the result of the refusal or the original accident? Where, therefore, the refusal was unreasonable, but there was a conflict of medical testimony as to the probable success of the operation, it was

HELD—that the arbitrator was entitled to come to the conclusion that the employers had not discharged the burden on them of showing that the continued incapacity was not due to the accident.

*Warncken v. Richard Moreland & Son, Ltd.* ([1909] 1 K. B. 184) and *Tutton v. Owners of S.S. "Majestic"* ([1909] 2 K. B. 54) considered and applied.

MARSHALL *v.* ORIENT STEAM NAVIGATION CO., [LD., [1910] 1 K. B. 79; 79 L. J. K. B. 204; 101 L. T. 584; 26 T. L. R. 70; 54 Sol. Jo. 50; 3 B. W. C. C. 15—C. A.]

124. *Reasonableness of the Injured Workman in Refusing to Undergo an Operation—Question of Fact—Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), Sched. I. (1) (b).]—A workman, after being for some long period in receipt of compensation, refused to undergo an operation. On an application to review, the employers' doctors were unanimous as to the advisability and as to the strong probability of the success of the suggested operation. The workman called two doctors, whose opinions disagreed.

HELD—that the finding of the county court judge that this workman was not unreasonable, was a fact which could not be upset on appeal.

RUABON COAL CO. *v.* THOMAS, 3 B. W. C. C. 32 [—C. A.]

## (u) Industrial Diseases.

125. *Names and Addresses of Former Employers—False Statement—Bar—Workmen's Compensation Act*, 1906 (6 Edw. 7, c. 58), s. 8, sub-s. (1) (c).]—In an arbitration under the Workmen's Com-



### I. Liability of Master for Injury to Servant— *Continued.*

pensation Act, 1906, A. claimed compensation from B. (his last employer) on the ground that he was suffering from the industrial disease of lead poisoning. He produced in process a list of the names and addresses of former employers as required by sect. 8, sub-sect. (1) (c) (7), of the Act. In the condescence annexed to his claim he falsely stated that he had not used white lead when employed by these persons. It did not appear that B. was prejudiced by this false statement.

**HELD**—that A. was not barred thereby from claiming compensation under the Act.

TAYLOR v. BURNHAM & CO., [1910] S. C. 705 :  
[47 Sc. L. R. 643 ; 3 B. W. C. C. 569 - Ct. of Sess.]

### 2. Under Employer's Liability Act, 1880.

126. "*Workman*"—"*Seaman*"—"*Rigger*" at *Dock*—*Merchant Shipping Act, 1854* (17 & 18 Vict. c. 104), s. 2—*Employers and Workmen Act, 1875* (38 & 39 Vict. c. 90), s. 13—*Employers' Liability Act, 1880* (43 & 44 Vict. c. 42), s. 8—*Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), s. 742.—The word "*seaman*" in the *Employers' Liability Act, 1880*, is not defined by the *Merchant Shipping Act, 1854*, but bears its ordinary signification, and does not include a "*rigger*," a man who is casually employed in warping a vessel from one side of a dock to another.

Decision of C. A. ([1909] 2 K. B. 811 ; 78 L. J. K. B. 1165 ; 101 L. T. 366 ; 25 T. L. R. 761 ; 53 Sol. Jo. 715) affirmed.

MACBETH & CO. v. CHISLETT, [1910] A. C. [220 ; 79 L. J. K. B. 376 ; 102 L. T. 82 ; 26 T. L. R. 268 ; 54 Sol. Jo. 268 ; 47 Sc. L. R. 623—H. L.]

### 3. Apart from Workmen's Compensation and Employers' Liability Acts.

See also No. 18, *supra*.

127. *Common Employment*—*Workman Travelling by Train from Work*—*Train Belonging to Employers*—*Accident while Workman in Train*—*Negligence of Another Employee—Fatal Accidents Act, 1846* (9 & 10 Vict. c. 93).—The respondents were owners of a colliery and of a railway in connection with it, and supplied a train on their railway by which their workmen could travel to and from their work. There was no obligation on the workmen to use the train, but no one excepting the respondents' workmen was allowed to use it.

A workman while travelling from his work on the train was killed in consequence of the negligence of a servant of the respondents who was engaged in repairing a bridge over the line.

In an action against the respondents to recover damages under the *Fatal Accidents Act, 1846* :—

**HELD**—that the defence of "*common employment*" was a good answer to the claim, as the accident had been caused by the negligence of a fellow-servant while the deceased was still in

the position of a workman employed by the respondents.

Decision of C. A. ([1909] 1 K. B. 530 ; 78 L. J. K. B. 452 ; 100 L. T. 314 ; 25 T. L. R. 218 ; 53 Sol. Jo. 214) affirmed.

COLDRICK v. PARTRIDGE, JONES & CO., LD., [1910] A. C. 77 ; 79 L. J. K. B. 173 ; 101 L. T. 835 ; 26 T. L. R. 164 ; 54 Sol. Jo. 132 ; 47 Sc. L. R. 610—H. L.]

128. *Harbour Commissioners—Use of Crane Let to Discharge Cargo—Injury to Seaman Unloading Vessel—Negligence of Craneman Found by Jury—General Servant—Particular Employment—Liability of Harbour Commissioners.*—The respondents were proprietors of a harbour with quays. As part of the plant there were travelling cranes for unloading vessels at the quays. A shipowner having applied for the use of one of the cranes, which was managed by a man in the service of the respondents, and the hirer having, as found by the jury, no authority to control the craneman, except as to the time of raising and lowering the buckets :—

**HELD**—on the facts, in an action by a seaman engaged in unloading a vessel who was injured by the negligence of the craneman in lowering the bucket, that the craneman was not the servant of the hirer, and the respondents were liable in damages for the injury to the seaman.

*Donovan v. Laing, Wharton and Down Construction Syndicate* ([1893] 1 Q. B. 629) considered.

Decision of C. A., Ireland ([1910] 2 I. R. 470) affirmed.

MCARTAN v. BELFAST HARBOUR COMMISSIONERS, 44 I. L. T. 223—H. L. (I.)

129. *Common Employment—Breach of Statutory Regulations—Coal Mines Regulation Act, 1887* (50 & 51 Vict. c. 58), ss. 49, 50—*Coal Mines Regulation Act, 1896* (59 & 60 Vict. c. 42).—Statutory defences to proceedings of a criminal nature in respect of offences under the *Coal Mines Regulation Acts* are only defences in such proceedings, and are not statutory defences in civil proceedings based on the non-performance of statutory duties. Consequently, if a breach of statutory duties is alleged, it is no defence to the owners in civil proceedings that they have done the best in their power to ensure compliance with the statutory regulations, and that the negligence which has caused damage to one of their servants is the negligence of a fellow-servant.

New trial ordered (Cozens-Hardy, M.R., dissenting).

DAVID v. BRITANNIC MERTHYR COAL CO., [1909] 2 K. B. 146 ; 78 L. J. K. B. 659 ; 100 L. T. 678 ; 25 T. L. R. 431 ; 53 Sol. Jo. 398—C. A.]

**HELD**, on appeal—that the jury had been misdirected in being told that, unless they were of opinion that there was evidence that the owner had connived at the breach of the regulations in question, they ought to find a verdict for him.

Decision of C. A. (*supra*) affirmed on different

## I. Liability of Master for Injury to Servant — Continued.

grounds, some of the reasons given by C. A. being dissented from.

**BRITANNIC MERTHYR COAL CO. v. DAVID.** [1910] A. C. 74; 79 L. J. K. B. 153; 101 L. T. 833; 26 T. L. R. 164; 54 Sol. Jo. 151; 47 Sc. L. R. 609—H. L.

**130. Common Employment—Negligence of Fellow-Servant—Personal Injury Sustained in Course of Employment—Privilege Given and Enjoyed under Contract of Service.**—The employees in a large establishment belonging to the defendants, and consisting of numerous separate departments, were as part of the contract of service entitled to purchase goods in any department at a reduced price. The plaintiff, who was employed in the toy department on the third floor of the building, while purchasing meat at the butcher's department on the ground-floor, slipped on a piece of fat negligently (as found by the jury) left on the floor by the butcher, and sustained severe injuries.

**HELD**—that the injuries were caused in the course of the plaintiff's employment by the negligence of a fellow-servant, and that the plaintiff could not sustain an action for damages against her employers, the defendants.

(*Coldrick v. Partridge, Jones & Co., Ltd. (supra)*), applied.

**WALDRON v. JUNIOR ARMY AND NAVY STORES, LD.**, [1910] 2 I. R. 381—C. A., Ireland.

**131. Common Employment—Assault by Master of Vessel on Member of Crew—Responsibility of Owners—Relevancy.**—A seaman brought an action for damages against the owners of a vessel, in which he averred that when he was lying ill on board, the master, "acting in the course of his employment, and in defenders' interest," in order to compel him to proceed with his work, assaulted him and pulled him from his berth, whereby his illness was aggravated.

**HELD**—that as the pursuer and master were fellow-servants the action must be dismissed as irrelevant.

**DOWNIE v. CONNELL BROTHERS, LD.**, [1910] [S. C. 781; 47 Sc. L. R. 666—Ct. of Sess.

**132. Negligence—Volenti non fit Injuria—Additional Risk—Defective Crane—Averments—Relevancy.**—In an action of damages for personal injuries at the instance of a workman against his employers the pursuer averred that on a date specified, while at work as an iron-moulder, an occupation which necessitated his working in a stooping position, he was struck on the head by the chain block of a crane; that on a subsequent date, having remained in the same employment, he was again struck on the head by the chain block of the crane: that the crane was very much off the plumb and only remained stationary at the point of equilibrium; that on both occasions when the pursuer was struck it was moving back to that point from the place where it had been used; that the defenders were aware of its defective condition; and that it was a source of danger to anyone whose place of

work was at or near the line of its orbit as it moved towards the point of equilibrium.

**HELD**—that the pursuer could not be presumed to have undertaken the risk of the defective condition of the crane, that not being an ordinary risk incidental to his employment, and consequently that, *quoad* both the occasions specified, issues must be allowed.

*Smith v. Baker & Sons* ([1891] A. C. 325) applied.

**ROBERTSON v. PRIMROSE & Co.**, [1910] S. C. [111; 47 Sc. L. R. 147—Ct. of Sess.

## II. LIABILITY OF MASTER FOR INJURY BY SERVANT: SCOPE OF AUTHORITY.

See also No. 131, *supra*: **LIBEL AND SLANDER**, No. 8; **RAILWAYS**, No. 9; **SHIPPING**, No. 4.

**133. Negligence—Scope of Employment—Right of Jury to Disregard Evidence—Trial Unsatisfactory—New Trial.**—In an action under Lord Campbell's Act for negligently causing death by the respondent's servant while driving his motor car, the jury found negligence and that the driver was acting in the course of his master's employment. The evidence was that the driver was driving the car in the public street towards his master's house, but the driver alone gave rebutting evidence that, when the death was caused, he was engaged for his own amusement. The Court of Appeal having directed judgment to be entered for the respondent (defendant), and the pleadings and trial being unsatisfactory:—

**HELD**—that there must be a new trial.

**O'REILLY v. MC'CALL**, [1910] 2 I. R. 42: 44 [I. L. T. 1—H. L. (I.).

## III. CONTRACTS BETWEEN MASTER AND SERVANT NOT RELATING TO PERSONAL INJURIES.

See also **CONTRACT**, No. 8; **MINES**, No. 7; **TRADE**, Nos. 2, 4.

**134. Contract of Employment—Breach—Dispute—Subsisting Claims—Adjustment and Set-off—Justices' Jurisdiction—Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 3 (1).**—The respondents summoned the appellant under the Employers and Workmen Act, 1875, claiming damages for a breach of contract by the appellant, and further claiming that the wages due to the appellant from the respondents be ascertained, and that the respective claims for damages and for wages be adjusted and set off by the Court. The claim for damages arose from the fact that the appellant and other workmen absented themselves from work without leave, whereby the respondents' colliery was stopped for the day. The magistrate found that there had been a breach of contract by the appellant, and he awarded the respondents 5s. 9d. damages and 5s. 6d. costs. He further found that £1 15s. 8d. was due to the appellant for wages and was payable on the following Saturday. No request or application for payment had been made by the appellant. The magistrate held that the respondent's indebtedness in the sum of £1 15s. 8d. to

### III. Contracts between Master and Servant not relating to Personal Injuries—Continued.

the appellant constituted a claim on the part of the appellant within the meaning of sect. 3 (1), of the Employers and Workmen Act, 1875, and he set off the damages and costs against this sum.

**HELD** (Moulton, L.J., dissenting)—that the word "claims" in sect. 3 (1) meant claims whether put forward or not, and that the magistrate was right in taking into consideration claims between the employer and the workman down to the time of hearing, and including wages earned before the hearing but payable two days after the hearing.

Decision of Div. Ct. ([1910] 1 K. B. 386; 79 L. J. K. B. 283; 102 L. T. 40; 74 J. P. 38; 26 T. L. R. 169) affirmed.

**KEATES v. LEWIS MERTHYR CONSOLIDATED [COLLIERTIES, LD.,]** [1910] 2 K. B. 445; 79 L. J. K. B. 722; 102 L. T. 898; 71 J. P. 292; 26 T. L. R. 477; 54 Sol. Jo. 522—C. A.

**135. Burgh Surveyor—Services Outside Scope of Employment—Claim for Extra Remuneration—No Specific Claim to Date of Action—Delay—Burden of Proof.**—The appellant's father, a burgh surveyor, brought an action against his employers for payment for work done by him, which he alleged was outside the scope of his official duties, which action was continued on his death by the appellant. No express contract to give him extra remuneration had been made. He was never instructed to do any work except in his capacity as burgh surveyor. On three occasions during his period of service, which lasted for thirty-eight years, he accepted honoraria from his employers for special services without reservation of any claims. With these three exceptions he did all the work remitted to him without any extra remuneration, and he took no definite steps to make good his claims, although he knew that his employers all along denied liability.

**HELD**—that the pursuer's delay, though not an absolute bar to his claim, threw on him the onus of proving that the work was done by him otherwise than as burgh surveyor, and that he had failed to discharge the onus.

Decision of Ct. of Sess. ([1909] S. C. 971; 46 Sc. L. R. 577) affirmed.

**MACKISON'S TRUSTEES v. MAGISTRATES OF [DUNDEE,]** [1910] W. N. 67; [1910] S. C. (H. L.) 27; 47 Sc. L. R. 354—H. L. (Sc.).

### IV. DISMISSAL.

See also No. 141, *infra*; COMPANIES, No. 19; DAMAGES, No. 4; INJUNCTIONS, No. 5.

**136. Agreement for Employment—Right to Dismiss Servant Summarily—Reasonable Notice.**—By an agreement between a trading firm and A. the latter was to serve the former on the West Coast of Africa as clerk and trade assistant. Clause 2 of the agreement provided as follows: "The said [assistant] shall, as and from the date of

leaving Liverpool for Africa, become and, subject as hereinafter provided, continue for two years, or until the date of his leaving Africa, in the service and employment of the said employers as clerk and trade assistant for them. . . . Provided always, however, that the employers may at any time hereafter, at their absolute discretion, terminate this engagement at any earlier date than specified if they may desire to do so." Clause 8 provided for A.'s summary dismissal if he should fail to give satisfaction or do certain specified acts. A. was to receive a salary at and after the rate of £250 per annum.

**HELD**—that in the absence of misconduct on the part of A. the employers were not entitled under the proviso to clause 2 of the agreement to terminate A.'s engagement without giving him reasonable notice.

**IN RE AFRICAN ASSOCIATION, LD., AND ALLEN,** [1910] 1 K. B. 396; 79 L. J. K. B. 259; 102 L. T. 129; 26 T. L. R. 234—Div. Ct.

**137. Power to Dismiss on 14 Days' Notice—Dismissal on Payment of 14 Days' Wages in lieu of Notice.**—The plaintiff was a servant of the defendant company under a contract which could be terminated by a fortnight's notice. He was also the secretary of a branch of the Amalgamated Society of Railway Servants. In that capacity he wrote a letter to another employee of the defendants requiring him to apologise for an accusation of theft he had made against a fellow servant, who was also a member of the branch of the Amalgamated Society of Railway Servants. For writing this letter the plaintiff was dismissed by the defendants and was given 14 days' wages in lieu of notice. In an action claiming damages for wrongful dismissal:—

**HELD**—that the action failed and that the defendants were justified in dismissing the plaintiff.

**AUSTWICK v. MIDLAND RY. CO.,** 25 T. L. R. [728—Grantham, J.]

On appeal, affirmed by C. A. (see [1910] W. N. 32).

**138. Construction of Bridge under Local Act—Ferryman—Abolition of Office—Compensation—Littlehampton Urban District Council (Arun Bridge) Act, 1905 (5 Edw. 7, c. clxxx.), s. 6 (6).—A local Act of Parliament, passed for the purpose of enabling the defendants to construct a bridge over the river Arun and to acquire the ferry rights over the river from certain trustees, stipulated that the defendants should pay compensation to any servants in the regular employment of the trustees who should not be retained in the same or similar employment, and at the salary and on the terms and conditions in, at, and on which they were employed by the trustees at the date of the execution of the contract for the construction of the bridge, in respect of any loss of office or diminution of salary by reason of the transfer of the undertaking by the trustees to the defendants.**

The plaintiffs, who had been in the employment of the trustees as ferrymen, were, on the transfer of the ferry undertaking, continued by the

IV. Dismissal—*Continued.*

defendants in the same employment and at the same salary for two years until the completion of the bridge, when they were dismissed by the defendants without notice.

**HELD**—that the plaintiffs were entitled to the same notice as the trustees would have been bound to give them or to wages in lieu of notice, but that they were not entitled to compensation under the Act.

Decision of Bucknill, J., affirmed.

**LATTER v. LITTLEHAMPTON URBAN DISTRICT** [COUNCIL, 101 L. T. 172; 73 J. P. 426; 8 L. G. R. 211—C. A.]

**139. Secret Profit—Servant's Denial accepted by Employer—"Condonation."**—Where a servant has in fact been guilty of some act of misconduct in his employment—for example, by taking a secret profit—but the master accepts the servant's denial of guilt and honestly comes to the conclusion that the servant is innocent, then, whatever the master's credulity, the servant is not entitled, in an action for illegal dismissal, to rely on condonation, since no man can condone a wrong which he does not believe has been committed upon him.

**FEDERAL SUPPLY AND COLD STORAGE CO. OF** [SOUTH AFRICA, LD. v. ANGEHRN AND PIEL, 80 L. J. P. C. 1; 103 L. T. 150; 26 T. L. R. 626—P. C.]

## V. WAGES: TRUCK ACTS.

[No paragraphs in this vol. of the Digest.]

## VI. SEDUCTION OF SERVANT.

[No paragraphs in this vol. of the Digest.]

## VII. APPRENTICES.

See also SHIPPING, Nos. 69, 70.

**140. "Served a Regular Apprenticeship"—Necessity of Writing—Sale of Medicine by Chemist—Exemption from Stamp Duty—Medicines Stamp Act, 1812 (52 Geo. 3, c. 150), s. 2, and Sched.]**—Except where it is otherwise provided by statute, writing is necessary to constitute an apprenticeship, but the contract need not be by deed.

Writing is necessary to constitute an apprenticeship within the meaning of the schedule to the Medicines Stamp Act, 1812, which gives special exemption to medicinal preparations sold by a chemist or druggist who has served a regular apprenticeship.

**KIRKBY v. TAYLOR**, [1910] 1 K. B. 529; 79 L. J. [K. B. 267; 102 L. T. 184; 74 J. P. 143; 26 T. L. R. 246—Div. Ct.]

See S. C. under MEDICINE, No. 9.

**141. Agreement—Apprenticeship or Hiring and Service—Power to Dismiss for Misconduct.**—By an agreement in writing the defendant engaged the plaintiff, who was of full age, as an "improver" to the trade of watch repairing, and undertook to teach the plaintiff or cause him to be taught for two years. The plaintiff paid a premium and was paid a weekly wage, and undertook to employ himself industriously and to the best of his abilities. The agreement also

provided that the plaintiff should work the weekly standard hours, and that any short time occasioned by the plaintiff either by sickness or any other cause should be deducted from his weekly wage in proportion to the loss of time, and that any overtime worked should be paid for in the same ratio. Annexed to the agreement were the following terms:—(1) "Improvers are required on trial one week. No wages paid during time of trial. (2) Improvers must supply their own tools. (3) If improver's time is completed at or under twenty-one years of age, he must be article as an apprentice, but if his term commences after the age of twenty-one, a written and stamped agreement must be drawn up and duly signed." The plaintiff, having been dismissed for gross misconduct during the currency of the agreement, sued the defendant for damages for breach of contract.

**HELD**—on the construction of the agreement, that it was not a contract of apprenticeship, and that the defendant was entitled to dismiss the plaintiff.

Statement of the law in Smith's Law of Master and Servant (6th ed., p. 48) approved by Bray, J.

**JAMES v. KRAUTH**, 26 T. L. R. 240—Div. Ct.

**142. Apprenticeship Deed—Restrictive Covenant—Breach of Covenant after Expiration of Apprenticeship—Injunction.**—A restrictive covenant contained in an apprenticeship deed prohibiting the apprentice from carrying on within a defined radius the same business as his master after the expiration of the apprenticeship is, if fair and reasonable, binding on the apprentice notwithstanding that he entered into it when he was an infant. A breach of such a covenant committed after the expiration of the apprenticeship can therefore be restrained by injunction.

**GADD v. THOMPSON**, [1910] W. N. 262; 103 [L. T. 614; 27 T. L. R. 113; 55 Sol. Jo. 156—Div. Ct.]

## MAYOR.

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## MEDICINE AND PHARMACY.

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*See also* FOOD AND DRUGS; REVENUE.**I. MEDICAL PRACTITIONERS.**

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**II. DENTISTS.****(a) Unregistered Persons.**

1. *Description Implying that Person is Registered or Specially Qualified to Practise Dentistry*—*Dentists Act, 1878* (41 & 42 Vict. c. 33), s. 3.—The respondents, who were not registered under the Dentists Act, 1878, affixed the following notice on their premises:—"Bellerby, Heyworth, and Bowen. Finest artificial teeth. Painless extractions. Advice free. Mr. Heyworth attends here."

**HELD**—that such notice did not imply that the defendants were registered under the Dentists Act, 1878, or that they were persons specially qualified to practise dentistry; and, therefore, that it did not constitute a contravention of sect. 3 of that Act.

*Barnes v. Brown* ([1909] 1 K. B. 38) overruled.

Decision of C. A. ([1909] 2 Ch. 23; 78 L. J. Ch. 666; 101 L. T. 254; 73 J. P. 361; 25 T. L. R. 591; 53 Sol. Jo. 576) affirmed.

**BELLERBY v. HEYWORTH AND ANOTHER.** [1910] A. C. 377; 79 L. J. Ch. 402; 102 L. T. 545; 74 J. P. 257; 26 T. L. R. 403; 54 Sol. Jo. 441; 47 Sc. L. R. 900—H. L.

2. *Description Implying that Person is Registered or Specially Qualified to Practise Dentistry*—*Dentists Act, 1878* (41 & 42 Vict. c. 33), s. 3.—The use by an unregistered person of the following description and notices—viz., "English and American Dentistry. Painless Extractions. Consultations and Advice Free. Minter and Snow. Dental Institute"—is not a contravention of sect. 3 of the Dentists Act, 1878.

**MINTER v. SNOW**, 74 J. P. 258; 54 Sol. Jo. 441 [—H. L.

3. *Description Implying that Person is Registered or Specially Qualified to Practise Dentistry*—*Dentists Act, 1878* (41 & 42 Vict. c. 33), s. 3.—The words "specially qualified" in sect. 3 of the Dentists Act, 1878, refer to a qualification in the nature of a degree or diploma, and do not include the case of a description implying mere personal skill.

*Barnes v. Brown* ([1909] 1 K. B. 38) not followed.

**BYRNE v. ROGERS**, [1910] 2 I. R. 220—Div. Ct., [Ireland.

4. *Negligence—Requisite Skill—Failure to Display Ordinary Skill.*—An unregistered dentist, if not known to the person operated upon to be unregistered, must attain the standard of skill of the registered practitioner at the place and

in the circumstances where the services are rendered; if known to be unregistered, then the skill which he professes to have.

Circumstances where **HELD**—that defenders in an action had held out themselves and their employees as competent to perform dental operations with ordinary skill, and were liable in damages in respect of a grossly careless operation performed by one of their employees.

**DICKSON v. HYGIENIC INSTITUTE**, [1910] S. C. [352; 47 Sc. L. R. 286—Ct. of Sess.

**(b) Dental Companies.**

[No paragraphs in this vol. of the Digest.]

**(c) In General.**

[No paragraphs in this vol. of the Digest.]

**III. VETERINARY SURGEONS.**

5. *Company—Holding out Manager as Specially Qualified to Practise Veterinary Surgery*—*Veterinary Surgeons Act, 1881* (44 & 45 Vict. c. 52), s. 17.—The defendant company was incorporated with the object of carrying on business as, *inter alia*, veterinary surgeons. It was a one-man company, the defendant C., who was not registered under the Veterinary Surgeons Act, 1881, being the sole director. On the front of the defendant company's business was the following statement: "Churchill's Veterinary Sanatorium, Limited. Dogs and Cats Boarded. Jas. Churchill, M.D., U.S.A., Specialist, Managing Director." In an action at the relation of the Royal College of Veterinary Surgeons to restrain the defendants from taking or using any name, title, addition, or description implying that they were specially qualified to practise the art of veterinary surgery or from holding out the said company as being qualified or being conducted by persons who were qualified to practise the said art:—

**HELD**—that there was a representation by the defendants that C. was a practitioner of a branch of veterinary surgery, that he was described in a way which was contrary to the provisions of sect. 17 of the Veterinary Surgeons Act, 1881, and that an injunction must be granted to restrain such representation being made.

**ATTORNEY-GENERAL v. CHURCHILL'S VETERINARY SANATORIUM, LD., AND CHURCHILL**, [1910] 2 Ch. 401; 79 L. J. Ch. 741; 103 L. T. 368; 74 J. P. 397; 26 T. L. R. 630—Neville, J.

**IV. SALE OF POISONS.**

6. *Sale under Trade Name of Seller—Pharmacy Act, 1868* (31 & 32 Vict. c. 121), s. 17).—Sect. 17 of the Pharmacy Act, 1868, which requires that, on the sale of any poison, the box, bottle, vessel, wrapper, or cover in which the poison is contained shall, *inter alia*, state the name and address of the seller, is sufficiently complied with in that respect if the trade name and address of the seller is given, although such trade name may not be the seller's personal name.

**EDWARDS v. PHARMACEUTICAL SOCIETY OF GREAT BRITAIN**, [1910] 2 K. B. 766; 79 L. J. K. B. 859; 102 L. T. 592; 74 J. P. 283; 26 T. L. R. 420—Div. Ct.

## IV. Sale of Poisons—Continued.

7. *Sale by Unlicensed Person — Penalty — Pharmacy Act, 1868* (31 & 32 Vict. c. 121), s. 15 — *Poisons and Pharmacy Act, 1908* (8 Edw. 7, c. 55), s. 2.]—An unlicensed assistant of a person duly licensed under sect. 2 of the Poisons and Pharmacy Act, 1908, sold an insecticide containing a poisonous vegetable alkaloid within the schedule to that Act.

HELD—that he was liable to the penalty prescribed by sect. 15 of the Pharmacy Act, 1868.

PHARMACEUTICAL SOCIETY *v.* NASH, 27 [T. L. R. 147; 55 Sol. Jo. 156—Div. Ct.]

## V. CHEMISTS.

8. *Pharmaceutical Chemist — Unregistered Person — Use of Sign Suggesting Registration — Pharmacy Act, 1852* (15 & 16 Vict. c. 56), s. 12.]

—Sect. 12 of the Pharmacy Act, 1852, provides that after the passing of the Act it shall not be lawful for any person not being duly registered as a pharmaceutical chemist to assume or use the title of pharmaceutical chemist or pharmacist, or to assume, use, or exhibit any name, title, or sign implying that he is registered under the Act, or that he is a member of the society, under a penalty of £5. M. kept a drug shop, at which he sold medicines, and over the premises and upon the labels on the bottles of medicine supplied by him appeared the words, "R. Mercer & Co., The Pharmacy, Haydock."

HELD—that M. had not committed an offence under sect. 12 of the Pharmacy Act by using a sign implying that he was registered under the Act or was a member of the Pharmaceutical Society.

PHARMACEUTICAL SOCIETY OF GREAT BRITAIN [*v.* MERCER, [1910] 1 K. B. 74; 79 L. J. K. B. 50; 101 L. T. 635; 74 J. P. 26; 26 T. L. R. 35; 54 Sol. Jo. 33—Div. Ct.]

9. *Medicine—Sale of "Blood Purifier"—Stamp Duty—Exemptions—"Served a Regular Apprenticeship"—No Agreement in Writing—Medicines Stamp Act, 1812* (52 Geo. 3, c. 150), s. 2, and Sched.]—An information was laid against the respondent for selling a medicinal preparation which did not bear a duly stamped paper cover as required by sect. 2 of the Medicines Stamp Act, 1812. The respondent claimed to come within the special exemption conferred by that Act on any chemist or druggist "who hath served a regular apprenticeship." He had in fact served his father as an apprentice under an oral agreement.

HELD—that an oral agreement together with actual service did not constitute the respondent a person who had "served a regular apprenticeship" within the special exemption and therefore that he was liable to the penalty provided by the Act.

KIRKEY *v.* TAYLOR, [1910] 1 K. B. 529; 79 [L. J. K. B. 267; 102 L. T. 181; 74 J. P. 143; 26 T. L. R. 246—Div. Ct.]

## MEETINGS.

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## METROPOLIS.

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**I. BUILDINGS.****(a) In General.**

1. *School Erected for County Council—District Surveyor's Fees—London Building Act, 1894 (57 & 58 Vict. c. cexiii.), ss. 154, 157, 201 (5).*—The appellants erected for the London County Council, as education authority for the county of London, school premises intended to be used as a special public elementary school. During the progress of the work the respondent, who was the district surveyor, inspected it in that capacity. The premises were built in accordance with plans prepared by the architect to the London County Council Education Department and approved by the

Board of Education, and such plans were in no way deviated from by reason of any requirements of the respondent. A building notice was served on the respondent under sect. 145 of the London Building Act, 1894, after the completion of the buildings, but not previously.

**HELD**—that, whether or not the building was exempted by sect. 201 (5) of the London Building Act, 1894, from the operation of Parts VI. and VII. of the Act, yet, as it had been decided in *London County Council v. District Surveyors' Association and Willis* ([1909] 2 K. B. 138) that the district surveyor was entitled to notice in respect of such a building under sect. 145, and as he had duties to perform in respect of it under Parts of the Act other than Parts VI. and VII., he was entitled to the fees mentioned in sect. 154 as being payable to the district surveyor.

**GALBRAITH BROTHERS v. DICKSEE**, 102 L. T. [890; 74 J. P. 348; 8 L. G. R. 800, 869—Div. Ct.

**(b) Building Line.****(1) In General.**

2. *Certificate of Superintending Architect—Appeal to Tribunal of Appeal—Powers of Tribunal—Previous Certificate in Existence not Appealed Against—Res Judicata—London Building Act, 1894 (57 & 58 Vict. c. cexiii.), ss. 22, 24, 25, 182.*—Where a certificate, which has not been appealed against, has been given by the superintending architect of metropolitan buildings, the general line of building in a street so defined is (in the absence of evidence of buildings having been since erected that had altered or might alter the line of buildings) *res judicata*, and the tribunal of appeal has no power to define a line differing from it.

Decision of C. A. (98 L. T. 110; 72 J. P. 41; 6 L. G. R. 126) affirmed.

**LILLEY v. LONDON COUNTY COUNCIL**, [1910] [A. C. 1; 79 L. J. K. B. 202; 100 L. T. 709; 73 J. P. 297; 53 Sol. Jo. 429; 7 L. G. R. 675—H. L.

**(2) Projecting Structures.**

3. *General Line of Buildings in Street—Shops Erected on Forecourts—Alteration of Building Line—Consent of Metropolitan Board of Works—Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 75—London Building Act, 1894 (57 & 58 Vict. c. cexiii.), ss. 22, 27, 216.*—The superintending architect certified that the frontage line of old houses in the respective forecourts of which, in some cases, one-storey shops had been erected, was still the general line of buildings in that part of the street.

The Tribunal of Appeal took the view that the general line of buildings was the frontage-line of the shops.

The Court of Appeal upheld the certificate of the superintending architect, and the building owners appealed.

**HELD**—that the superintending architect had rightly disregarded the one-storey buildings which had subsequently been erected on the forecourts, as there was evidence that some only had been

### I. Buildings—Continued.

erected with the consent of the Metropolitan Board of Works, while as to one of the others there was evidence that the consent of the board had been refused; and as to the rest, there was no evidence that consent had been applied for.

Decision of C. A. ([1909] 2 K. B. 317; 78 L. J. K. B. 830; 101 L. T. 323; 73 J. P. 339; 53 Sol. Jo. 558; 7 L. G. R. 720) affirmed.

FLEMING v. LONDON COUNTY COUNCIL; [METROPOLITAN RY. CO. v. LONDON COUNTY COUNCIL, [1910] W. N. 223; 80 L. J. K. B. 35; 103 L. T. 466; 55 Sol. Jo. 28; 8 L. G. R. 1055—H. L.

#### (c) "Building or Structure."

[No paragraphs in this vol. of the Digest.]

#### (d) Nature of Buildings.

##### (1) In General.

4. *Access to Roof—Public-house—Projecting Shop—Main Front—Dwelling-house Occupied as Such by not more than Two Families—London Building Acts (Amendment) Act, 1905* (5 Edw. 7, c. cxi.), ss. 10, 12.]—The respondents were the owners of a house No. 120, E.-road, used as a public-house, which stood at the corner of E.-road and C.-street, being on the north side of E.-road and on the west side of C.-street. The main building had four stories over the basement, but the ground floor projected as a ground floor building for a distance of 49 ft. beyond the south front or wall of the main building right out to the pavement of E.-road. The total length of frontage on C.-street was 86 ft., of which the frontage of the house as distinct from the projection was 37 ft., and the length of frontage on E.-road was 21 ft. The house was inhabited by thirteen persons—viz., the tenant, his wife, his three children, their servant, and the members of the public-house staff. All these persons slept in the house. There was one entrance to the house in the E.-road, and another at the corner between E.-road and C.-street leading to the bar on the ground floor, and by a passage and staircase to the first, second, and third floors; and this was the shortest way to the open street from the bedrooms and main building, and was the natural method of access to and from that part of the house.

HELD—that the magistrate was justified in finding on the evidence that the main front of the building was in C.-street, and so the building was not within sect. 10, sub-sect. 1, of the London Building Acts (Amendment) Act, 1905.

HELD FURTHER—that the house was a "dwelling-house occupied as such by not more than two families," and so was within the exception contained in sect. 12, sub-sect. 1 (a) of the same Act.

LONDON COUNTY COUNCIL v. CANNON BREWERY [Co., 103 L. T. 574; 74 J. P. 461; 8 L. G. R. 1094—Div. Ct.

##### (2) Dwellings for Working Classes.

[No paragraphs in this vol. of the Digest.]

### (e) Height of Buildings.

See No. 4. *supra*.

### (f) Dangerous, Defective, Temporary, and Wooden Structures.

[No paragraphs in this vol. of the Digest.]

### (g) Party Walls.

5. *Rebuilding Party Wall—Subsequent Sale by Building Owner—Use of Party Structure by Adjoining Owner—Right of Original Building Owner to Claim Contribution—London Building Act, 1894* (57 & 58 Vict. c. cccxiii.), ss. 95, 99.]—By an agreement made in 1895 it was agreed that the plaintiff should be allowed to reconstruct a party wall, and that the defendants' predecessors should have the right to use the party wall at any time they might desire upon payment of one moiety of the cost. In 1896 the plaintiff sold the property in right of which he built the wall to S., the conveyance only purporting to convey to S. so much of the wall as was built on the plaintiff's property. In 1899 S. conveyed the property to G. The plaintiff did not purport to assign to S. his interest under the agreement, and did not intend to convey to him any right he had under it. In 1908 the defendants desired to build upon the party wall, and eventually paid a sum of money to G. under an award made under the London Building Act, 1894. The plaintiff claimed to be entitled to this sum.

HELD—that the money had been properly paid to G., upon the ground that the section must be read as if the words "or his successors in title" were inserted after the words "the building owner at whose expense the same was built."

MASON v. FULHAM CORPORATION, [1910] 1 K. B. [631; 79 L. J. K. B. 385; 102 L. T. 188; 74 J. P. 170; 8 L. G. R. 415—Div. Ct.

## II. BYE-LAWS.

### (a) Betting in Streets.

[No paragraphs in this vol. of the Digest.]

### (b) Lavatories and Water-closets.

[No paragraphs in this vol. of the Digest.]

### (c) Lights on Vehicles.

[No paragraphs in this vol. of the Digest.]

### (d) Lodging-houses.

[No paragraphs in this vol. of the Digest.]

## III. DRAINAGE.

### (a) Drain or Sewer.

[No paragraphs in this vol. of the Digest.]

### (b) In General.

[No paragraphs in this vol. of the Digest.]

## IV. HACKNEY CARRIAGES.

6. *Motor Cab—Regulation of Commissioner of Police—Liability to Penalty—London Hackney Carriages Act, 1843* (6 & 7 Vict. c. 86), s. 29—*London Hackney Carriages Act, 1850* (13 & 14



#### IV. Hackney Carriages—Continued.

*Vict. c. 7*, ss. 4, 8—*London Hackney Carriage Act, 1853* (16 & 17 *Vict. c. 33*). ss. 19, 21.]—The respondent, who was a motor cab driver, was summoned for wilfully disregarding a regulation made by the Commissioner of Metropolitan Police that the first two drivers of motor cabs at a standing must be with their cabs and be ready to be hired at once by any person. This regulation was made under sect. 4 of the *London Hackney Carriages Act, 1850*, but that section does not provide any penalty for breach of any regulation so made.

The *London Hackney Carriage Act, 1853*, provides by sect. 19 that for every offence against the provisions of this Act, for which no special penalty is appointed, the offender shall be liable to a penalty of 40s., and by sect. 21 that the Act is to be construed as one with the *London Hackney Carriages Act, 1843*, and the *London Hackney Carriages Act, 1850*.

HELD—that the effect of sects. 19 and 21 of the Act of 1853 was to create one code of law for the regulation of hackney carriages, that sect. 21 of the Act of 1853 was a general penalty section which would apply to a breach of any provision of the three Acts which was not specifically provided for elsewhere, and that a breach of regulations made under an Act was a breach of the Act itself, and that, therefore, if the offence was proved, the respondent was liable to the penalty provided by sect. 19 of the *London Hackney Carriage Act, 1853*.

WILLINGALE v. NORRIS. [1909] 1 K. B. 57; [78 L. J. K. B. 69; 99 L. T. 830; 72 J. P. 495; 25 T. L. R. 19; 7 L. G. R. 76; 21 Cox, C. C. 737—Div. Ct.]

7. *Cab Licence—Discretion of Commissioner of Metropolitan Police as to Issue of Licence—Metropolitan Public Carriage Act, 1869* (32 & 33 *Vict. c. 115*). ss. 6, 11—*London Cab and Stage Carriage Act, 1907* (7 *Edw. 7, c. 55*).]—The Commissioner of Metropolitan Police has a discretion as to the issue of cab licences, and the Court will not, therefore, grant a *mandamus* compelling him to issue such licence.

R. v. COMMISSIONER OF METROPOLITAN POLICE. [EX PARTE PEARCE. 130 L. T. Jo. 178; 45 L. J. N. C. 809—Div. Ct.]

#### V. NUISANCES, Etc.

##### (a) Offensive Trades.

8. *Dead Horses—Receiving Carcasses—Use of Yard, Building, or other Premises—Necessity of Licence—London County Council (General Powers) Act, 1903* (3 *Edw. 7, c. clxxxvii.*), s. 53.]—Sect. 53 of the *London County Council (General Powers) Act, 1903*, provides that it shall not be lawful for any person to use any yard, building, or other premises within the county for receiving or keeping horses for slaughter or the carcasses of dead horses, unless he shall hold a licence from the council to use such yard, building, or other premises for that purpose.

HELD—that the above provision does not apply to the use of a public place by a person as

one of the public, but to the use of a place by a person as the proprietor or occupier or licensee.

BAILEY v. LOWMAN. [1910] 2 K. B. 39; 79 [L. J. K. B. 611; 102 L. T. 569; 71 J. P. 211—Div. Ct.]

##### (b) Removal of Refuse.

[No paragraphs in this vol. of the Digest.]

##### (c) Smoke.

[No paragraphs in this vol. of the Digest.]

##### (d) In General.

[No paragraphs in this vol. of the Digest.]

#### VI. OFFICERS.

See No. 1, *supra*.

#### VII. RATES.

See RATES, No. 5.

#### VIII. SANITARY CONVENIENCES, WATER-CLOSETS, etc.

[No paragraphs in this vol. of the Digest.]

#### IX. STREETS.

See also NEGLIGENCE, Nos. 6, 7, 15, 16, 17.

##### (a) Breaking up.

9. *Electric Lighting—Laying Mains—London Bridge—Electric Lighting Acts, 1882* (45 & 46 *Vict. c. 56*). ss. 12, 13; and 1899 (62 & 63 *Vict. c. 19*). *Sched.*, s. 12—*London Electric Supply Act, 1908* (8 *Edw. 7, c. clxvii.*), s. 4.]—The defendants proposed to connect up their areas of supply on the north and south sides of the Thames by laying electric mains along streets, including London Bridge, outside their areas of supply, in pursuance of the powers conferred on them by the *London Electric Supply Act, 1908*. London Bridge is not a bridge repairable by the local authority, but is repairable by the Corporation of the City of London as trustees of the Bridge House Estates. The latter sought an injunction to restrain the defendants from laying the proposed mains, and a declaration that the Act of 1908 did not entitle them to break up or carry the mains over London Bridge without the corporation's consent.

HELD, that according to the true construction of sect. 4 of the *London Electric Supply Act, 1908*, the defendants had power, subject to the provisions of the Acts therein referred to, to lay electric mains over London Bridge, that is, subject to the consent either of the corporation or, if that were refused, of the Board of Trade.

CORPORATION OF LONDON v. COUNTY OF [LONDON ELECTRIC SUPPLY CO., LD. [1910] 2 Ch. 208; 79 L. J. Ch. 486; 102 L. T. 589; 74 J. P. 268; 26 T. L. R. 432; 54 Sol. Jo. 476; 8 L. G. R. 660—Parker, J.]

##### (b) Laying Out.

[No paragraphs in this vol. of the Digest.]

##### (c) Obstruction.

10. *Stall on Street—"Costermonger, Street Hawker or Itinerant Trader"—Definition—Metropolitan Paving Act, 1817* (57 *Geo. 3*,

## IX. Streets—Continued.

*c. xxix.*), s. 65—*Metropolitan Streets Act, 1867* (30 & 31 Vict. c. 134), s. 6—*Metropolitan Streets Act Amendment Act, 1867* (31 & 32 Vict. c. 5), s. 1.]—The appellant, who was a refreshment-house keeper in R. Road, Westminster, also kept a street stall in L. Street, Westminster, by the side of the kerb, where he sold butcher's meat through an employee. The stall was stationary throughout the day, being set up in the morning and removed at night. It consisted of a two-wheeled barrow, on one end of which a stall board rested, the other end resting on trestles, and it complied with the regulations made by the Commissioner of Police. The barrow was similar to the barrows used by costermongers.

HELD—that the appellant was not a "costermonger, street hawker or itinerant trader," within sect. 1 of the Metropolitan Streets Act Amendment Act, 1867, so as to exempt him from the operation of sect. 6 of the Metropolitan Streets Act, 1867, which prohibits the depositing of goods in the streets.

BAKER v. BRADLEY AND ANOTHER, 103 L. T. [253; 74 J. P. 341; 8 L. G. R. 832—Div. Ct.

## (d) Paving and Making up.

11. *Paving Expenses—Right to Recover—Street Widened without Sanction of London County Council—Metropolis Management Act, 1855* (18 & 19 Vict. c. 120), s. 105—*London Building Act, 1894* (57 & 58 Vict. c. cxxiii.), s. 213.]—In 1907 a road in the borough of Camberwell was widened without the sanction but with the knowledge of the London County Council. In 1909 the appellants decided to pave part of the road as a new street under the provisions of the Metropolis Management Act, 1855, and the amending Acts, and they summoned the respondent, who was the owner of premises abutting on the street, for not paying a contribution towards the expenses under sect. 105 of the Metropolis Management Act, 1855.

HELD—that non-compliance with the provisions of the London Building Act, 1894, as to the sanction of the London County Council being obtained for the widening, did not preclude the appellants from enforcing sect. 105 of the Metropolis Management Act, 1855, if the road was in fact a new street.

CAMBERWELL CORPORATION v. DIXON, [1910] [1 K. B. 424; 79 L. J. K. B. 318; 102 L. T. 33; 74 J. P. 77; 8 L. G. R. 238—Div. Ct.

12. *Leaking Water Pipe—Opening Roadway to Repair—Notice to Reinstatement within Forty-eight Hours—Validity of Notice—Metropolis Management Act, 1855* (18 & 19 Vict. c. 120), s. 112.]—The appellants having discovered a leak in one of their pipes caused the roadway in the district of the W. City Council to be opened, and, after repairing the defective pipe, temporarily reinstated the roadway. The respondent, on behalf of the W. City Council, the road authority for the city, thereupon gave notice to the appellants requiring them forthwith to repair the pavement injured by the bursting of the pipe, and informing them that the city council would make good

the pavement or surface or soil when broken up instead of permitting such work to be done by the appellants, and would charge the appellants with the expense. The appellants did not within forty-eight hours do any work under the notice, and the respondent summoned them under sect. 112 of the Metropolis Management Act, 1855, for their default in repairing the pavement within that time. The appellants contended that the notice was bad in law as being an attempt to combine sects. 112 and 114 into one section, and that sect. 112 only applied where there was actually a defective pipe at the time of the giving of the notice thereunder.

HELD—that the road authority were not precluded, by the fact of their having given notice under sect. 112 to the appellants to repair the pavement, from exercising their right under sect. 114 to do the work themselves at the expense of the appellants; that sect. 114 did not merely apply to a case where the surface was opened at the option of the appellants, but also to a case where the bursting of a pipe had rendered it necessary, and that the notice was not rendered bad by the road authority indicating that they were going to do that part of the work which they were entitled to do, but might be regarded as a proper notice requiring the appellants to open up the road so that the extent of the repair necessary might be seen, and informing them that when it was opened up the road authority would do the work.

METROPOLITAN WATER BOARD v. BRADLEY, [102 L. T. 893; 74 J. P. 331; 8 L. G. R. 815—Div. Ct.

13. *New Street—Altering Footway and Roadway—Expenses—Charging Frontagers—Metropolis Management Act, 1855* (18 & 19 Vict. c. 120), s. 105—*Metropolis Management Amendment Act, 1862* (25 & 26 Vict. c. 102), s. 77.]—A certain "new street" consisted of a roadway, and had a footpath on one side varying in width from 9 ft. 7 in. to 20 ft., and a footpath on the other side varying from 19 ft. to 21 ft. The local authority purporting to act under sect. 105 of the Metropolis Management Act, 1855, resolved to pave such new street, and apportioned between the frontagers the estimated expenses of such paving. The works comprised the throwing of part of the footpaths into the roadway, and part of the roadway into the footpaths, so as to make the footpaths on each side of the roadway of a uniform width of 15 ft.

HELD—that the local authority were not entitled under sect. 105 of the Act, to charge the frontager with the expenses of thus rearranging the footpaths and the roadway.

Robertson v. Bristol Corporation ([1900] 2 Q. B. 198) considered and applied.

WANDSWORTH BOROUGH COUNCIL v. GOLDS [1911] 1 K. B. 60; 103 L. T. 568; 74 J. P. 464; 8 L. G. R. 1118—Div. Ct.

## (e) Widening.

See also No. 11, *supra*.

14. *Notice to Treat—Repudiation as to Part—Withdrawal—Revival of Previous Notice—Notice*

### IX. Streets—Continued.

*to Acquire Reversion without Leasehold Interest—Metropolis Paving Act (Michael Angelo Taylor's Act)*, 1817 (57 Geo. 3, c. xxix.), ss. 80, 82.]—A notice to treat served under sect. 80 of Michael Angelo Taylor's Act operates as a contract so as to fix the subject-matter of the notice, and the person upon whom it is served must either accept it as a whole or repudiate it altogether, and if he repudiates it, those serving the notice can withdraw it.

Decision of Eve, J. ([1909] 2 Ch. 287; 78 L. J. Ch. 633; 100 L. T. 925; 73 J. P. 364; 25 T. L. R. 622; 53 Sol. Jo. 561; 7 L. G. R. 733) affirmed.

*WILD v. WOOLWICH BOROUGH COUNCIL*, [1910] 1 Ch. 35; 79 L. J. Ch. 126; 101 L. T. 58; 74 J. P. 33; 26 T. L. R. 67; 54 Sol. Jo. 64; 8 L. G. R. 203—C. A.

15. *Taking Part Only—Factory—Michael Angelo Taylor's Act*, 1817 (57 Geo. 3, c. xxix.), s. 80.]—A local authority intending to widen a street has no power under Michael Angelo Taylor's Act to take part only of a factory where the use of the factory would be thereby substantially injured and could not be enjoyed in the same way as before.

*Gibbon v. Puddington Vestry* ([1900] 2 Ch. 794) applied.

*GREEN v. HACKNEY CORPORATION*, [1910] 2 Ch. 105; 80 L. J. Ch. 16; 102 L. T. 722; 74 J. P. 278—Neville, J.

#### (f) In General.

[No paragraphs in this vol. of the Digest.]

### X. WATER SUPPLY.

See also No. 12. *supra*; NEGLIGENCE, Nos. 6, 7.

16. *"Domestic Purposes"—Trade Purposes—Business Premises—Metropolitan Water Board (Charges) Act*, 1907 (7 Edw. 7, c. clxxi.), ss. 8, 9, 13, 16, 25.]—A supply of water to business premises is a supply for "domestic purposes" within the meaning of sect. 25 of the Metropolitan Water Board (Charges) Act, 1907, if the water is used for domestic as distinguished from business purposes.

Water was supplied by the defendants to the plaintiffs, a gas company, who had large premises. No one slept or resided on the premises, nor was any part of the premises charged with the payment of inhabited house duty. The plaintiffs had a large number of employees, for whose use they had to supply sanitary conveniences, and in addition thereto a number of taps for the supply of water for the purposes of washing or drinking. The water so supplied was solely used by those employees while engaged in carrying on the plaintiffs' trade and business. For their manufacturing purposes the plaintiffs drew a supply of water from a stream that flowed through their premises.

HELD—that the water supplied by the defendants to the plaintiffs was for "domestic purposes" within sect. 25 of the Metropolitan Water

Board (Charges) Act, 1907, and that payment therefor must be made on that footing, subject to the rebate allowed by sect. 9 of the Act.

*SOUTH SUBURBAN GAS CO. v. METROPOLITAN WATER BOARD*, [1909] 2 Ch. 666; 79 L. J. Ch. 27; 101 L. T. 560; 73 J. P. 503; 26 T. L. R. 12; 8 L. G. R. 43—Neville, J.

17. *Agreement in 1902 with West Middlesex Water Company—Metropolitan Water Board—Benefit of Agreement—Metropolis Water Act*, 1902 (2 Edw. 7, c. 41), ss. 15 (6), 45 (b), 46—*Metropolitan Water Board (Charges) Act*, 1907 (7 Edw. 7, c. clxxi.), *preamble*, ss. 2, 6, 24, 35, and *Scheds.*]—By an agreement made on November 4th, 1902, M. agreed with the West Middlesex Water Company to pay to the company one guinea per annum for each of the twelve hydrants fixed at the King's Theatre, Hammer-smith. In 1909 the Metropolitan Water Board, to whom the undertaking of the West Middlesex Water Company was transferred by the Metropolitan Water Act, 1902, sued M., under the agreement of November 4th, 1902, for twelve guineas in respect of the water supply to the said hydrants for four quarters up to March 31st, 1909. The defendant contended that, having regard to the terms of the Metropolitan Water Act, 1902, and of the Metropolitan Water Board (Charges) Act, 1907, the said agreement was determined by operation of law on April 1st, 1908, when the Act of 1907 came into operation.

HELD—that the agreement was not so determined, but was saved by sect. 45 (b) of the Act of 1902 and sect. 35 of the Act of 1907.

*METROPOLITAN WATER BOARD v. MULHOLLAND*, 74 J. P. 27; 8 L. G. R. 88.

18. *"Domestic Purposes"—"Railway Purposes"—Urinals and Closets at Railway Station—Metropolitan Water Board (Charges) Act*, 1907 (7 Edw. 7, c. clxxi.), ss. 9, 25.]—A supply of water to the urinals and water-closets at a railway station is not a supply for "domestic purposes" within the meaning of that expression in the Metropolitan Water Board (Charges) Act, 1907.

*Per* Cozens-Hardy, M.R.—A railway company is bound to afford reasonable lavatory accommodation for the use of passengers, and may be compelled by the Railway Commissioners so to do.

*South Suburban Gas Co. v. Metropolitan Water Board* (*supra*) considered and distinguished.

Decision of Div. Ct. ([1910] 1 K. B. 804; 79 L. J. K. B. 625; 102 L. T. 320; 74 J. P. 225; 26 T. L. R. 363; 8 L. G. R. 346) affirmed.

*METROPOLITAN WATER BOARD v. LONDON, BRIGHTON, AND SOUTH COAST Ry.*, [1910] 2 K. B. 890; 79 L. J. K. B. 1179; 103 L. T. 304; 74 J. P. 409; 26 T. L. R. 676; 8 L. G. R. 930—C. A.

19. *Water Rate—Liability of Owner of Premises—"Annual Value" of Premises—Rateable Value—Waterworks Clauses Act*, 1847 (10 & 11 Vict. c. 17), ss. 68, 72—*Southwark and Vauxhall Water Act*, 1852 (15 & 16 Vict. c. clviii.), ss. 53,

**X. Water Supply—Continued.**

58—*Water Rate Definition Act, 1885* (48 & 49 Vict. c. 34), ss. 1, 2—*Metropolitan Water Board (Charges) Act, 1907* (7 Edw. 7, c. clxxi.), ss. 4, 8, 13.]—The provisions of the *Water Rate Definition Act, 1885*, apply not only to sect. 68 of the *Waterworks Clauses Act, 1847*, but also to sect. 72 of that Act and to sect. 58 of the *Southwark and Vauxhall Water Act, 1852*, and consequently, in order to prove the annual value of a house in the metropolis for the purpose of determining whether the water rate is to be paid by the owner or the occupier, it is sufficient to produce the rate-book showing the rateable value of the house as settled by the local authority.

*METROPOLITAN WATER BOARD v. STREETON*,  
[102 L. T. 220; 74 J. P. 180; 8 L. G. R. 277—Div. Ct.]

20. *Water Rate—House or Building—House Communicating with Adjoining Houses—Metropolitan Water Board (Charges) Act, 1907* (7 Edw. 7, c. clxxi.), s. 8.]—The defendants occupied premises consisting of what were originally two blocks of buildings, most of which were originally separate houses. Between all the properties there were communicating doors. The supply of water to the premises was furnished by means of a communication pipe leading to one of the houses only, and no pipe or other apparatus connected this supply with any other part of the defendants' premises.

**HELD**—that there was evidence upon which a county court judge could hold that the particular house thus supplied was a "house or building occupied as a separate tenement" within the meaning of sect. 8 of the *Metropolitan Water Board (Charges) Act, 1907*, and that the defendants were only liable to pay water rate based upon the rateable value of that house alone.

*METROPOLITAN WATER BOARD v. G. P. AND J. BAKER, LD.*, 102 L. T. 536; 74 J. P. 337; 26 T. L. R. 396; 8 L. G. R. 623—Div. Ct.

21. *Agreement to pay Special Rate in respect of Tenements under £20—Mortgage of Tenements—Meaning of "Owner"—Receiver appointed by Mortgagee—Liability for Arrears—Waterworks Clauses Act, 1847* (10 & 11 Vict. c. 17), ss. 3, 72; *East London Waterworks Act, 1853* (16 & 17 Vict. c. clxvi.), s. 81; *Water Companies (Regulation of Powers) Act, 1887* (50 & 51 Vict. c. 21), ss. 3, 4.]—The owner of a block of flats, which were respectively of an annual value of less than £20, agreed with a water company for the supply of water to the flats by meter. The owner then mortgaged the premises, and upon his getting into difficulties the defendant was appointed to act as receiver of rents on behalf of the mortgagee. The rents were actually collected from the occupiers by S., who paid them to the owner before the receiver was appointed, and then to the latter. When the defendant was appointed there were certain arrears of water rate due to the plaintiffs, who were the successors of the water company.

The company's special Act, which incorporated the *Waterworks Clauses Act, 1847*, provided that the owners of all houses, not exceeding the annual

value of £20, should be liable for the water rates; and that the person receiving the rents should, for that purpose, be deemed to be the owner.

The defendant having refused to pay the rates which had accrued due prior to his appointment—

**HELD**—that he was not liable to pay them, as S., and not the defendant, was the receiver of rents contemplated by the special Act and the *Waterworks Clauses Act, 1847*.

Decision of Channell, J. ([1910] 2 K. B. 134; 79 L. J. K. B. 722; 103 L. T. 72; 74 J. P. 233; 8 L. G. R. 464) affirmed, but on different grounds.

*METROPOLITAN WATER BOARD v. BROOKS*,  
[1910] W. N. 258; 45 L. J. N. C. 771; 130 L. T. Jo. 105—C. A.]

**XI. MISCELLANEOUS.**

[No paragraphs in this vol. of the Digest.]

**MILITIA.**

See ROYAL FORCES.

**MILK.**

See FOOD AND DRUGS.

**MINES, MINERALS, AND QUARRIES.**

COL.

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See also DEPENDENCIES, No. 13.

**I. MINING LEASE.**

See also No. 12, *infra*.

1. *Construction—Clause against Working Adjoining Minerals—Penalty for Contravention—Prohibition.*—By an agreement made between the appellant, the proprietor of one portion of a coalfield which was worked by pits on his land, of the first part, and the respondents, the lessees of the coalfield, of the second part, it was provided that "The second parties hereby undertake and bind themselves and their forefathers that from and after the term of Whit Sunday, 1893, they will work the coal in the adjoining properties only to such an extent as to enable them



### I. Mining Lease—Continued.

to pay to the several proprietors thereof such sums of lordship as will amount to, but not exceed, the fixed rents agreed by their several leases to be paid to such proprietors respectively, declaring that if in any year during the currency of this lease the sums payable to such adjoining proprietors shall exceed the said fixed rents, which amount to £550 per annum, then and in that event the second parties shall be bound, as they hereby agree and bind themselves and their forebears, to pay to the first party and his forebears the sum of one penny per ton on every ton of coal worked from the land of such adjoining proprietors in excess of the quantities necessary to make up or equal the said fixed rents payable to them as above mentioned: In consideration whereof the first party gives up and renounces from and after the term of Martinmas, 1888, the right to exact the wayleave of one penny per ton presently payable to him."

HELD—that the prohibition to work coal in the adjoining properties in excess of the agreed amount was absolute, and could not be contravened on payment of the one penny per ton.

Decision of the First Division of the Court of Session (1908) 45 Sc. L. R. 290 reversed.

FORREST AND OTHERS v. MERRY AND CUNING-  
[HAME, [1909] A. C. 417; 79 L. J. P. C. 49;  
101 L. T. 138; 46 Sc. L. R. 789—H. L. (Sc.)

2. *Covenant by Lessees that They would "Immediately or as soon as may be after this Demise proceed to Open" Mines—Breach of Covenant—Damages.*—By a mining lease dated in May, 1889, the lessees covenanted with the lessor that they would "immediately or as soon as may be after this demise proceed to open and get the several mines" thereby demised, and from time to time, and at all times during the term thereby granted, fairly and orderly and in regular and workmanlike manner and according to the custom and usual method of working mines of the same description in the neighbourhood, wherein the thereby demised mines lay, work the same mines respectively with effect and without any voluntary intermission or delay and in accordance with the most approved mode of working such mines.

HELD—that the lessees were bound to proceed to open and get the several demised mines as soon as might be after the lease was executed, without reference to any obligations on their part elsewhere, or to whether it was the most beneficial mode of working the mines.

Decision of C. A. (102 L. T. 154) affirmed.

WIGAN COAL AND IRON CO., LD. v. ECKERSLEY,  
[103 L. T. 468—H. L.]

3. *Construction—"Fair, Proper and Workmanlike Manner"—Right to Let Down Surface—Buildings on Surface—Overlying and Underlying Seams of Coal—Powers of Working.*—Mines were let on lease to a colliery company subject (*inter alia*) to a covenant to work them "in a fair, proper, and workmanlike manner and according to the best mode of working for the time being adopted in the neighbourhood,"

and further, "by such ways to all intents and purposes as not to injuriously affect or make it more difficult and expensive to work the seams lying next beneath or next above." The company also covenanted not to "injure or endanger the houses, buildings, and erections now or hereafter to be standing on the said lands by undermining the foundations thereof or working the said coal." This was done in all parts of the mines by means of the "Long wall" and "Barry" systems, which were the systems in general use in the neighbourhood, but in one part it was found that these methods could not be employed without danger of letting down the surface on which there was a village, so another system was employed. The owners objected on the ground that this was a breach of the covenants in the leases, and sought an injunction to restrain the company from further working this system.

HELD—that, in deciding what was a "fair, proper, and workmanlike manner," all the circumstances of the case including the lessee's covenants must be considered, and that the company had not committed a breach of the covenants.

BREWER v. RHYMNEY IRON CO., [1910] 1 Ch.  
[766; 79 L. J. Ch. 334; 102 L. T. 392—  
Parker, J.]

4. *Trustees—Power to Grant Mining Leases—Unopened Mines.*—Trustees of a will are not entitled, under a power in the will to let and manage and to grant building and other leases of real property until conversion, to grant leases of unopened mines.

Clegg v. Rowland ((1866) L. R. 2 Eq. 160) followed.

Daly v. Beckett ((1857) 24 Beav. 114) not followed.

IN RE BASKERVILLE, BASKERVILLE v. BASKER-  
[VILLE, [1910] 2 Ch. 329; 79 L. J. Ch. 687;  
102 L. T. 90; 26 T. L. R. 584—Joyce, J.]

See S. C., TRUSTS, No. 12.

## II. MINING REGULATIONS.

### (a) Coal Mines.

5. *Explosion—Non-Compliance with Statutory Regulations—Liability of Owners—Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 50.*

—In an action brought against the owner of a coal mine for damages for injuries caused by an explosion resulting from non-compliance with the regulations prescribed by the Coal Mines Regulation Act, 1887, it is a misdirection to tell the jury that unless they are of opinion that there was evidence that the owner had connived at the breach of the regulations in question they ought to find a verdict for him.

Decision of C. A. ([1909] 2 K. B. 146; 78 L. J. K. B. 659; 100 L. T. 678; 25 T. L. R. 431; 53 Sol. Jo. 398) affirmed on different grounds.

BRITANNIC MERTHYR COAL CO., LD. v. DAVID,  
[1910] A. C. 74; 79 L. J. K. B. 153; 101  
L. T. 833; 26 T. L. R. 164; 54 Sol. Jo. 151;  
47 Sc. L. R. 609—H. L.]

## II. Mining Regulations—Continued.

6. *Checkweigher's Wages—Liability of Miner Paid by Day*—*Coal Mines Regulation Act, 1887* (50 & 51 Vict. c. 58), ss. 13, 14.]—Sect. 14 of the *Coal Mines Regulation Act, 1887*, provides that a checkweigher, appointed by a majority of the persons employed at a mine who are paid according to the amount of mineral gotten by them, may recover from any person for the time being employed at such mine, and so paid, his proportion of the checkweigher's wages. The plaintiff, a checkweigher, duly appointed under sect. 13 of the Act, sued the defendant, a miner, who was being temporarily paid by the day, to recover the proportion of his wages as checkweigher alleged to be due from the defendant. The plaintiff had weighed the coal sent up by the defendant, and these services were of some benefit to the defendant inasmuch as, when the coal sent up by him reached such a quantity that if paid by the amount gotten he would receive more than he was being paid by the day, he might enter into a new arrangement with the proprietors of the mine. The defendant declined to pay the sum demanded, on the ground that, being paid by the day, he was not liable to contribute to the checkweigher's wages.

HELD—that the defendant, being paid by the day, was not liable, under the statute, to contribute to the plaintiff's wages, and in the above circumstances was not liable under any contract to do so.

OXTON v. WILLIAMS, 101 L. T. 957; 26 T. L. R. [242—Div. Ct.]

7. *Hours of Work—Extension of One Hour Beyond Eight Hours—Interpretation of Contract*—*Coal Mines Regulation Act, 1908* (8 Edw. 7, c. 57), ss. 1 (1), 3 (1).]—The appellant was employed by the respondents as a collier upon terms which provided, *inter alia*, that the hours of labour should be such as are authorised by the *Coal Mines Regulation Act, 1908*, sect. 1 of which enacts that the period of work shall be limited to eight hours a day, and sect. 3 (1) of which enacts that the hours of work may be extended on not more than sixty days in a year, by not more than one hour a day, provided the owner, agent or manager takes the steps prescribed by the Act to secure such extension, and that on any day on which such an extension of time is made in accordance with that section the time so extended shall be substituted for the purposes of the Act as respects that mine for the time as fixed by the Act. The manager put up notices stating that on certain days the hours of working would be extended from eight hours to nine. These notices complied with the provisions of the Act. The appellant refused to work the extra hour.

HELD—that the appellant's refusal was a breach of his contract of service.

ROBINSON v. INSOLES, LD., 102 L. T. 45; 74 J. P. [47—Div. Ct.]

## (b) Fencing Abandoned Mines.

[No paragraphs in this vol. of the Digest.]

## (c) Quarries.

8. *Special Rules—Application of Special Rules Established under Previous Tenancy to New Tenancy—Metalliferous Mines Regulation Act, 1872* (35 & 36 Vict. c. 77), ss. 24, 28 (1), and 41—*Quarries Act, 1894* (57 & 58 Vict. c. 42), s. 2.]—Special rules under the *Metalliferous Mines Regulation Act, 1872*, as applied to quarries by the *Quarries Act, 1894*, had been established for a quarry which subsequently ceased to be worked. After an interval a new tenant took the quarry. He was not aware that any special rules had been established.

HELD, in a stated case—that the new tenant was not bound by the special rules, and that he had rightly been found not guilty in a complaint charging a contravention thereof.

GORDON v. ANDERSON, [1910] S. C. (J.) 26; 47 [S. C. L. R. 156; 6 Adam. 161—Ct. of Justy.]

## III. RESERVATION OF MINERALS.

9. *China Clay—Purchase of Land by Railway Company for their Undertaking—Statutory Reservation of Minerals—Railways Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 20), ss. 77, 79.]—Kaolin, or china clay, not being part of the ordinary soil of the district, but being of exceptional occurrence, is a mineral within the statutory reservation of minerals contained in sect. 77 of the *Railways Clauses Consolidation Act, 1845*.

Decision of C. A. ([1909] 1 Ch. 218; 78 L. J. Ch. 105; 99 L. T. 869; 73 J. P. 23; 25 T. L. R. 91) affirmed.

GREAT WESTERN RY. CO. v. CARPALLA UNITED [CHINA CLAY CO., LD., [1910] A. C. 83; 79 L. J. Ch. 117; 101 L. T. 785; 74 J. P. 57; 26 T. L. R. 190; 47 Sc. L. R. 612—H. L.]

10. *Meaning of "Minerals"—Sandstone—Railways Clauses Consolidation (Scotland) Act, 1845* (8 & 9 Vict. c. 33), ss. 70, 71.]—"Sandstone" is not a "mineral" within the meaning of sect. 70 of the *Railways Clauses Consolidation (Scotland) Act, 1845*.

Decision of Court of Session ([1909] S. C. 277; 46 Sc. L. R. 178) reversed.

NORTH BRITISH RY. CO. v. BUDHILL COAL AND [SANDSTONE CO., [1910] A. C. 116; 79 L. J. P. C. 31; 101 L. T. 609; 26 T. L. R. 79; 54 Sol. Jo. 79; [1910] S. C. (H. L.) 1; 47 Sc. L. R. 23—H. L. (Sc.).

11. *Fireclay—"Mineral"—Railways Clauses Consolidation (Scotland) Act, 1845* (8 & 9 Vict. c. 33), s. 70.]—A fireclay which varies from 60 to 140 feet below the surface of the ground, and does not form part of the subsoil of the place in question, is a mineral within the meaning of sect. 70 of the *Railways Clauses Consolidation (Scotland) Act, 1845*.

Great Western Ry. Co. v. Carpalla United China Clay Co., LD. (*supra*), and North British

### III. Reservation of Minerals—Continued.

*Ry. Co. v. Budhill Coal and Sandstone Co. (supra)* discussed.

CALEDONIAN RY. CO. v. GLENBOIG UNION [FIRECLAY CO., LD., [1910] S. C. 951; 47 Sc. L. R. 823—Ct. of Sess.

### IV. SUPPORT.

*See also* No. 3, *supra*.

**12. Overlying and Underlying Seams—Right to Work all the Underlying Minerals—Implied Right to Support.**—A lease of certain strata of coal granted to the plaintiffs contained a reservation to the lessors entitling them to work, or permit to be worked, seams underlying those demised to the plaintiffs. At the time the lease to the plaintiffs was granted, it was common knowledge to all persons conversant with mining that it would be impossible to work the lower seams without causing damage by subsidence to the upper seams.

**HELD**—that the reservation in the plaintiff's lease permitting the working of the lower seams must be read with the necessary implication—viz., that such working would cause a corresponding subsidence in the upper seams; and, accordingly, that the defendants as lessees of the lower seams were entitled to work those seams, although by doing so they let down the overlying minerals.

*Butterknowle Colliery Co. v. Bishop Auckland Co-operative Society* ([1906] A. C. 305) distinguished.

Decision of C. A. ([1909] 1 Ch. 37; 78 L. J. Ch. 63; 99 L. T. 818; 25 T. L. R. 45; 53 Sol. Jo. 45) affirmed.

BUTTERLEY CO., LD. v. NEW HUCKNALL [COLLIERY CO., LD., [1910] A. C. 381; 79 L. J. Ch. 411; 102 L. T. 609; 26 T. L. R. 415; 47 Sc. L. R. 901—H. L.

**13. Railway—Lateral Support from Minerals more than Forty Yards from Railway—Common Law Right to Support—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 78—85.**—A railway company enjoys no common law right of support from minerals lying behind the prescribed distance of forty yards from the railway.

LONDON AND NORTH-WESTERN RY. CO. v. [HOWLEY PARK COAL AND CANNEL CO., [1910] W. N. 163; 103 L. T. 26; 26 T. L. R. 541; 51 Sol. Jo. 616—Eve, J.

*See* S. C. under RAILWAYS I. (a) (iii.).

### V. MISCELLANEOUS.

[No paragraphs in this vol. of the Digest.]

## MISREPRESENTATION AND FRAUD.

I. FRAUD . . . . . COL. 424

### II. MISREPRESENTATION.

(a) Fraudulent Misrepresentation . 424  
(b) Innocent Misrepresentation . 424  
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*See also* AUCTIONS, No. 1; BANKRUPTCY, No. 30; SALE OF GOODS, No. 11.

### I. FRAUD.

*See* CRIMINAL LAW, II. (n).

### II. MISREPRESENTATION.

#### (a) Fraudulent Misrepresentation.

**1. Sale of Goods—Fraud—Bankruptcy of Buyer—Seller's Right to Rescission and Restoration—Failure to Prove Fraud Inducing Cause of Contract—Mora.**—A firm of outfitters who had sold goods to A. brought an action against her for their restoration on the ground that she had obtained them by fraud. At the time of the sale, viz., in July, 1908, A. stated to the firm's counting-house manager that she was entitled to money in September following. This statement was reported to the firm's managing director, on whose instructions the goods were then sold and delivered. A. had on a previous occasion bought goods from the same firm on credit, which she had afterwards paid for. When she obtained the goods in question, A., who was then subsisting solely on credit, represented herself as the tenant of a sporting estate in the Highlands, to which the goods were sent without any further inquiry on the part of the firm. The managing director did not appear as a witness. The action for rescission was raised on January 18th, 1909. On January 30th, 1909, A.'s estates were sequestrated and a trustee appointed thereon, who was duly sisted as defender.

**HELD** (Lord Salvesen dissenting)—that the defender must be assoilzied; per Lord Kinnear, on the ground that the pursuers had, in the absence as a witness of their managing director, failed to prove that A.'s statement, though false and fraudulent, was the inducing cause of the contract; and per Lord Johnston, on the additional grounds (1) that rescission, being an equitable remedy, ought not to be granted where, as here, (a) the remedy would if given be inequitable to other creditors, and (b) the representations made were so unreliable in their nature that they ought not to have received any credence; and (2) that the pursuers were barred by *mora*.

A. W. GAMAGE, LD. v. CHARLESWORTH'S [TRUSTEE, [1910] S. C. 257; 47 Sc. L. R. 191—Ct. of Sess.

#### (b) Innocent Misrepresentation.

**2. Lease by Deed—Executed Contract—Right to Cancellation on Ground of Misrepresentation.**—A lease by deed which has been executed

## MISDEMEANOURS.

*See* CRIMINAL LAW.

**II. Misrepresentation—Continued.**

by the lessee on the faith of an innocent misrepresentation on the part of the lessor and under which the lessee has gone into possession will not be cancelled by the Court upon the ground that the execution of the deed was induced by such misrepresentation.

ANGEL v. JAY, 55 Sol. Jo. 140—Div. Ct.

(c) **Misrepresentation as to the Nature of Documents.**

[No paragraphs in this vol. of the Digest.]

**MISTAKE.**

See also DEEDS, No. 1; GAMING, No. 1; LIMITATION OF ACTIONS, No. 1; REAL PROPERTY, No. 5; REVENUE, No. 7; SETTLEMENTS, No. 4.

**1. Money Paid under Mistake of Fact—Future Liability—No Legal Liability when Money Paid.]**

—By a standing agreement between the plaintiff and K. and Co., bankers in New York, a Mexican company was allowed to overdraw its account with K. and Co. up to £500, while the plaintiff, on being advised and as occasion required, paid £500 into K. and Co.'s account with the defendants in London. Accordingly the plaintiff, having received a letter from K. and Co. on October 30th, instructed his bankers to pay £500 to the defendants to be placed to K. and Co.'s credit, and this was done on October 31st. On October 30th K. and Co. stopped payment, but this fact was not known in England till after the £500 had been paid to the defendants by the plaintiff. Immediately on becoming aware of the stoppage of payment by K. and Co. the plaintiff applied to the defendants for repayment of the £500. K. and Co. were largely indebted to the defendants, and the latter, who had done no more than make an entry in their books of the receipt of the £500, claimed to retain that sum in reduction of K. and Co.'s indebtedness. The Mexican company's account with K. and Co. had not in fact been overdrawn.

**Held**—that the £500 was paid by the plaintiff as was agreed and intended, and under no mistake of fact, and therefore that he was not entitled to recover it back.

Decision of Hamilton, J. (101 L. T. 675; 26 T. L. R. 37; 54 Sol. Jo. 181; 15 Com. Cas. 1) reversed.

KERRISON v. GLYN, MILLS, CURRIE & CO., [102 L. T. 674; 26 T. L. R. 404; 15 Com. Cas. 241—C. A.]

**MONEY AND MONEY-LENDERS.**

**I. CLAIMS FOR INTEREST . . . . .**

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**II. LOANS BY MONEY-LENDERS . . . . .**

**III. THE MONEY-LENDERS ACT, 1900.**

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(a) **Scope of Act . . . . .**

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(b) **Registration . . . . .**

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(c) **Re-opening Transaction . . . . .**

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(d) **Miscellaneous . . . . .**

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**IV. APPROPRIATION OF PAYMENTS . . . . .**

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**I. CLAIMS FOR INTEREST.**

[No paragraphs in this vol. of the Digest.]

**II. LOANS BY MONEY-LENDERS.**

See III., *infra*.

**III. THE MONEY-LENDERS ACT, 1900.**

(a) **Scope of Act.**

[No paragraphs in this vol. of the Digest.]

(b) **Registration.**

**1. Carrying on Business at Registered Address—Part of Transaction carried out Elsewhere—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2.]**—Whether a money-lender carries on business only at his registered address is a question of fact, the answer to which depends upon the circumstances of the particular case.

*Per* Lord Loreburn, L.C.: If a money-lender really deals with a borrower at his registered address, whether by interview or correspondence, he may, without infringing the Money-lenders Act, 1900, transact negotiations, or conclude the actual contract, elsewhere.

*Per* Lord Mersey: The carrying on of the business referred to in the Act is something quite different from the carrying out of the transactions which make up the business. The carrying on of the business must be at the registered address; the carrying out of the transactions may be wherever convenient.

Decision of C. A. (*sub nom. Gadd v. Provincial Union Bank*, [1909] 2 K. B. 353; 78 L. J. K. B. 815; 101 L. T. 219; 25 T. L. R. 591) reversed.

KIRKWOOD v. GADD, [1910] A. C. 422; 79

[L. J. K. B. 815; 102 L. T. 753; 26 T. L. R. 530; 54 Sol. Jo. 599—H. L.]

**2. Carrying on Business at Registered Address**

—“Usual Trade Name”—Carrying on Two Businesses in Different Names at Different Addresses—Effect of Registration—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2.—The expression “usual trade name” in sect. 2 (1) (a) of the Money-lenders Act, 1900, means the name in which the money-lender was carrying on business before the date of registration.

A money-lender cannot carry on business at one address under his own or usual trade name and at another address as a partner of a firm registered under a different name.

Sect. 2 (1) (c) of the Act is meant to strike at the case of a person actually registered by the Commissioners of Inland Revenue as a money-lender contracting otherwise than in his registered name. So long as the money-lender's name remains on the register his contracts in that



### III. The Money-lenders Act, 1900—Continued.

name are valid, notwithstanding that the particular name may have been wrongly put upon the register.

Decision of C. A. ([1910] 1 K. B. 868; 79 L. J. K. B. 786; 102 L. T. 472; 26 T. L. R. 372; 54 Sol. Jo. 375) reversed.

WHITEMAN v. SADLER, [1910] A. C. 514; 79 [L. J. K. B. 1050; 103 L. J. 296; 26 T. L. R. 655; 54 Sol. Jo. 718—H. L.

3. *Name under which Business Carried On*—“Usual Trade Name”—*Carrying on Business in Different Names at Two Addresses*—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.—The expression “usual trade name” in sect. 2, sub-sect. 1 (a), of the Money-lenders Act, 1900 means the name by which the money-lender elects to be known; it does not mean that he must have had a “usual trade name” before the passing of the Act.

Overruled on this point by *Sadler v. Whiteman* (*supra*).

A money-lender cannot carry on business at one address under his own or usual trade name and at another address, as a partner of a firm registered under a different name.

STIBLING v. SILBURN AND PYMAN, [1910] 1 [K. B. 67; 79 L. J. K. B. 336; 101 L. T. 945; 26 T. L. R. 13—Bucknill, J.

4. *Carrying on Business at Registered Address*—*Cheque Posted to Borrower*—*Isolated Act*—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.—The fact that a cheque for a loan is not handed over to the borrower at the money-lender's registered address, but is sent by post, does not make the transaction void under sect. 2 of the Money-lenders Act, 1900.

*Lerone v. Gardner and Earl of Kilmorey* ((1909) 25 T. L. R. 711) considered.

JACKSON v. PRICE AND ANOTHER, [1910] 1 [K. B. 143; 79 L. J. K. B. 130; 26 T. L. R. 106—Darling, J.

5. *Carrying on Business at Registered Address*—*Application for Registration of New Address*—*Non-compliance with Forms*—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.—A firm of money-lenders, who had a registered address at Walsall, applied for registration at 102, Jermyn Street, London. In filling up the form of application prescribed by the Commissioners of Inland Revenue, the money-lenders merely stated as the name of the place where the business was carried on “102, Jermyn Street, St. James's, London, S.W.,” omitting all reference to their address at Walsall.

HELD—that such statement was not a compliance with the form; that the address in respect of which the money-lenders were already registered ought to have been stated; and that a money-lending transaction carried out at 102, Jermyn Street, before the application form was rectified, was void.

STAFFORDSHIRE FINANCIAL CO., L.D. v. [VALENTINE, [1910] 2 K. B. 233; 79 L. J. K. B. 680; 102 L. T. 467; 26 T. L. R. 362—C. A.

6. *Carrying on Business at Registered Address*—*Transaction Carried Out Entirely by Post*—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2 (1) (b).—Negotiations for a loan from a money-lender were carried on entirely through the post, the money-lender writing from his registered address, and the borrower from his residence. The money-lender posted to the borrower a promissory note which the latter signed at his residence and returned by post, and the former then sent also by post a cheque for the amount of the loan.

HELD—that the transaction had been carried out at the money-lender's registered address within the meaning of the Money-lenders Act, 1900.

IN RE SEED, EX PARTE KING, [1910] 1 K. B. [661; 102 L. T. 363; 26 T. L. R. 348; 54 Sol. Jo. 343; *sub nom.* IN RE A DEBTOR (No. 2 of 1910), EX PARTE THE PETITIONING CREDITOR, 79 L. J. K. B. 421; 17 Manson, 121—Div. Ct.

7. *Carrying on Business at Registered Address*—*Promissory Note Signed and Payment Made Elsewhere*—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.—The substantial negotiations for a loan took place at a money-lender's registered address, but neither the payment to the borrower took place at such address nor was the promissory note given by the latter signed there.

HELD—that the transaction had been carried out at the money-lender's registered address.

BLAIBERG AND ANOTHER v. CALVERT AND [WIFE, 26 T. L. R. 328—Hamilton, J.

8. *Carrying on Business at Registered Address*—*Receiving Repayment of Loans at Places other than Registered Address*—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.—A registered money-lender by merely receiving repayment of loans at places other than his registered address does not thereby carry on business elsewhere than at his registered address so as to be liable to the penalty imposed by sect. 2, sub-sect. 2, of the Money-lenders Act, 1900.

HOPKINS v. HILLS, [1910] 2 K. B. 29; 79 [L. J. K. B. 825; 102 L. T. 574; 74 J. P. 213; 26 T. L. R. 394—Div. Ct.

9. *Carrying on Business at Registered Address*—*Bill of Sale not Signed at Registered Address*—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), ss. 1, 2.—Where the negotiations for, and substantially the whole of the transaction in respect of, a loan took place at the money-lender's registered address, but a bill of sale granted by the borrower was executed elsewhere:—

HELD—that the transaction had been carried out at the money-lender's registered address within the meaning of sect. 2 of the Money-lenders Act, 1900.

RUETER v. BRADFORD ADVANCE CO., 26 [T. L. R. 533—Warrington, J.

10. *Security Taken in Other than Registered Name*—*Money-lenders Act, 1900* (63 & 64 Vict. c. 51), s. 2.—R., the beneficiary under a will, in consideration of £400 paid to him by one Levine, a money-lender, who carried on business under the registered name of Leslie, transferred to Levine

**III. The Money-lenders Act, 1900—Continued.**

£800, part of the share to which he was entitled under the will. The deed purported to be an out and out transfer of the £800 to Levine in his individual name, and contained no covenant by R. to pay the £800 or any sum of money or interest.

**HELD**—that notwithstanding the form of the deed, it was a security for money given to Levine in the course of his business as a money-lender, and as it had not been taken by him in his registered name of Leslie, it was void under sect. 2, sub-sect. 1 (c), of the Money-lenders Act, 1900.

IN RE ROBINSON, CLARKSON *v.* ROBINSON  
[*(No. 1)*, 27 T. L. R. 22—Neville, J.]

**11. Partners in Firm not Duly Registered—Security Transferred to Bonâ Fide Assignee—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2.**—Where the partners in a firm of money-lenders are not duly registered in accordance with the provisions of the Money-lenders Act, 1900, securities taken in the name of the firm are void, not only in the hands of the firm but also in the hands of an assignee who takes for value and without notice of any defect in the registration of the firm.

IN RE ROBINSON, CLARKSON *v.* ROBINSON  
[*(No. 2)*, [1910] 2 Ch. 571; 80 L. J. Ch. 39; 103 L. T. 497; 27 T. L. R. 37—Neville, J.]

**(c) Re-opening Transaction.**

**12. Closed Transaction—No Deception nor Pressure—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.**—Where there has been no deception nor pressure on the part of a money-lender the Court will not re-open a closed transaction of loan.

MICHAELSON *v.* NICHOLS, [1910] W. N. 69; 26 [T. L. R. 327—Pickford, J.]

**13. "Harsh and Unconscionable"—Excessive Interest—Whole Amount Becoming Immediately Due if Default Made in Payment of One Instalment—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.**—Where, in a money-lending agreement, a clause is inserted by which the whole amount for which the borrower has given a promissory note becomes due if default is made in the payment of one instalment, with the result that the rate of interest is largely increased, the transaction is *prima facie* harsh and unconscionable, unless such a clause is very clearly explained to the borrower.

HARRIS *v.* CLARSON, 27 T. L. R. 30—Channell, J.

**(d) Miscellaneous.**

[No paragraphs in this vol. of the Digest.]

**IV. APPROPRIATION OF PAYMENTS.**

**14. Affidavit by Debtor in Proceedings under Order 14—Intention—Payment on Basis of Affidavit.**—Where a debtor makes a payment to his creditor, and the inference to be drawn from the circumstances is that the payment is in fact appropriated by the debtor at the time of payment, the fact that he makes no express statement on the subject at the time is

immaterial. An appropriation by the debtor may be inferred from a variety of circumstances, and each case must be considered on its own peculiar facts.

In three actions, which were consolidated, brought as to two of them against A., and as to the third against A., and B, his surety, in which the plaintiff claimed £12,000 odd, being principal and interest on certain promissory notes granted by A. and B., A. in an affidavit, sworn in support of an application for leave to defend, stated in effect that he owed £1,474 on all the notes, and claimed to have the whole of the sums charged for interest inquired into. The master made an order that, on the sum of £1,474 being paid, A. should have leave to defend as to the residue of the claim. A. paid the £1,474.

**HELD**—that the true inference was that the £1,474 was appropriated by A. to the principal sum owing on all the notes, including those on which A. and B. were being jointly sued.

PARKER *v.* GUINNESS, 27 T. L. R. 129—Lush, J.

**MONOPOLIES.**

See COMPANIES, No. 8; PATENTS; TRADE, No. 3.

**MONUMENTS.**

See CHARITIES; ECCLESIASTICAL LAW; WILLS.

**MORTGAGE.**

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*See also* ARBITRATION, No. 5; BILLS OF SALE, No. 2; GUARANTEE, No. 2; LIMITATION OF ACTIONS, Nos. 3, 4; MONEY AND MONEY-LENDERS; RENTCHARGES, No. 2.

# 1. ACCOUNTS.

[No paragraphs in this vol. of the Digest.]

# II. ASSIGNMENTS.

[No paragraphs in this vol. of the Digest.]

# III. CONSTRUCTION AND OPERATION.

1. *Mortgage of Reversionary Interest—Marriage Settlement—Purported Assignment of Entire Fund—Recital of Life Interests—First Life Tenant Entitled to Moiety of Reversionary Interest—Subsequent Acquisition of Second Moiety by Mortgagor.*—Funds comprised in a marriage settlement which contained the usual trusts consisted of a reversionary interest in

£6,000 to which the wife was entitled after her mother's death. In 1865 the wife, there being no issue of the marriage, appointed £2,000, part of the settled funds, upon certain trusts subject to her own and her husband's life interests. In 1874 she died intestate without issue and without further exercise of her power of appointment, leaving her mother and her brother entitled as her statutory next of kin to equal moieties of the settled funds, subject to the mother's and husband's life interest and to the appointment of £2,000. In 1876 the brother by a mortgage, which recited the marriage settlement and the wife's death without issue, and erroneously recited that no appointment had been made by the wife, and further recited that the wife's mother and husband were still living, assigned all his reversionary interest under the settlement to which he was entitled "as sole next of kin" of the wife. The wife's mother died in 1878, intestate, leaving her son, the mortgagor, her sole next of kin. He also died intestate, and subsequently on the death of the husband the fund fell into possession.

**HELD**—that the recital as to the husband and mother being still alive was merely inserted as showing the life interests to which the fund was subject, that the mortgagor thought he could and intended to assign the entire fund subject to the life interests, and that the moiety which he subsequently acquired on the death of his mother was available to make the assignment effectual, subject to the appointment of the £2,000.

*Noel v. Bewley* ((1829) 3 Sim. 103) and *In re Hoffe's Estate Act*, 1855 ((1900) 82 L. T. 556) applied.

**IN RE BRIDGWATER'S SETTLEMENT, PARTRIDGE**  
[v. WARD, [1910] 2 Ch. 342; 79 L. J. Ch. 746; 103 L. T. 421—Eady, J.]

# IV. EQUITABLE MORTGAGES.

## (a) General.

[No paragraphs in this vol. of the Digest.]

## (b) By Deposit.

[No paragraphs in this vol. of the Digest.]

# V. EQUITY OF REDEMPTION.

[No paragraphs in this vol. of the Digest.]

# VI. FIXTURES.

[No paragraphs in this vol. of the Digest.]

# VII. FORECLOSURE.

2. *Consent Order—Mortgagee Parting with Mortgaged Property—Assent of Mortgagor to Foreclosure—Action on the Covenant Against Executors and Beneficiaries Under Will of Mortgagor—Demand in Writing.*—A testatrix mortgaged certain leasehold property, subject to a first mortgage, to the plaintiffs, covenanting that she or the persons deriving title under her would upon demand in writing left on the premises repay the mortgage debt and interest.

In 1904 by a consent order the plaintiffs and the testatrix were foreclosed, the plaintiffs then believing that the testatrix was without means.

### VII. Foreclosure—Continued.

The testatrix died in 1907, leaving an estate valued at £8,000. The only demand made by the plaintiffs was by letter to the defendants, the executors, and beneficiaries under the testatrix's will, not served on the premises.

Upon action by the plaintiffs on the covenant:—

**HELD**—that a consent order is an agreement embodying terms to which all the parties thereto assent, and by which all are bound; that the testatrix had therefore assented to the foreclosure so that the plaintiffs were not precluded from suing on the covenant; that the demand made was sufficient, and that the testatrix's estate was therefore liable to discharge the mortgage debt.

A puisne mortgagee, who is satisfied of the insufficiency of his security, is not, because he has voluntarily submitted to be foreclosed, thereby disentitled to sue on the covenant.

**WORTHINGTON & Co. v. ABBOTT**, [1910] 1 Ch. 588; 79 L. J. Ch. 252; 101 L. T. 895; 54 Sol. Jo. 83—Eve, J.

### VIII. FRAUD.

[No paragraphs in this vol. of the Digest.]

### IX. FURTHER ADVANCES.

[No paragraphs in this vol. of the Digest.]

### X. GENERAL.

[No paragraphs in this vol. of the Digest.]

### XI. INTEREST.

[No paragraphs in this vol. of the Digest.]

### XII. LEASES.

**3. Independent Gifts in Will — Mortgage by Beneficiary — Liability of Mortgagees for Breaches of Covenant.**—A testator by will gave two independent gifts to a beneficiary for life, who mortgaged her interest in both to the same mortgagees. One of the gifts, the subject-matter of which was a leasehold house, was given subject to the covenants in the lease, including a covenant to repair. Default having been made in the payment of interest, the mortgagees obtained a foreclosure order absolute, but did not enter into possession of the house. Some time afterwards, when the lessor commenced proceedings on the ground of breach of the covenant to repair, the trustees of the testator's will sought to make the mortgagees liable on the covenants contained in the lease.

**HELD**—that the mortgagees were not liable.

**IN RE LOOM, FULFORD v. REVERSIONARY [INTEREST SOCIETY, LD.]**, [1910] 2 Ch. 230; 79 L. J. Ch. 704; 102 L. T. 907; 54 Sol. Jo. 583—Parker, J.

*See S. C., WILLS*, No. 36.

**4. Mortgage by Sub-demise of Registered Leaseholds — Sale under Statutory Power — Duty of Vendor to Place Himself on the Register — Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 16 (2).**—A mortgagee of leaseholds under a mortgage by sub-demise selling his sub-term under his statutory power of sale is not a vendor of registered land within the meaning of sect. 16,

sub-sect. 2, of the Land Transfer Act, 1897, if no person has been registered as proprietor of the sub-term, even though the land has been placed upon the register by the person entitled to the leasehold reversion on his sub-term.

**IN RE VOSS AND SAUNDERS'S CONTRACT**, [1911] 1 Ch. 42; [1910] W. N. 217; 80 L. J. Ch. 33; 103 L. T. 493; 55 Sol. Jo. 12—Warrington, J.

*See S. C., REAL PROPERTY*, No. 7.

### XIII. MARRIED WOMEN.

[No paragraphs in this vol. of the Digest.]

### XIV. PARTNERSHIP.

[No paragraphs in this vol. of the Digest.]

### XV. PAYMENTS.

*See VII., supra.*

### XVI. POLICIES OF LIFE ASSURANCE.

**5. Priorities — Notice — Life Assurance Companies (Payment into Court) Act, 1896 (59 Vict. c. 8).**—There is no established principle that subsequent incumbrancers of a policy are bound to give notice to prior mortgagees.

A policy on the life of W. for £750 was payable in 1909, against which the insurance company had advanced £250. Between July, 1905, and May, 1906, W. negotiated loans amounting in all to £1,200 on the security of the policy, informing each lender that the £250 due to the insurance company was the only charge. The T. company, one of the lenders, paid the £250 to the insurance company, obtained possession of the policy, made further advances to W., and paid two premiums. No notice was given to the insurance company by any of the mortgagees at the time the loans were made, but upon the failure of W. they all gave notice in varying order. Upon the question of priority:

**HELD**—that the T. company came first for the £250 paid to the insurance company and for the premiums; that, as to the loans, the T. company and the other mortgagees came in order of their giving notice; subject to the postponement of those loans where there had been negligence in making inquiry as to the position of the policy.

**IN RE WENIGER'S POLICY (No. 1)**, [1910] 2 Ch. 291; 79 L. J. Ch. 546; 102 L. T. 728—Parker, J.

**6. Practice — Payment into Court — Insurance Company's Costs — Indemnity — Mortgagees' Costs — Life Assurance Companies (Payment into Court) Act, 1896 (59 Vict. c. 8) — R. S. C., Ord. 54C., r. 2.**—The priorities between various incumbrances of a life policy were determined in *In re Weniger's Policy (No. 1)* (*supra*). The insurance company had refused to pay the money into Court unless they received an indemnity for their costs, which the first mortgagees accordingly gave. On the claimants now asking to have the money paid out, the first mortgagees asked that the costs of the insurance company should be allowed out of the money



**XVI. Policies of Life Assurance—Continued.**

as mortgagees' costs and expenses properly incurred.

**HELD** that such costs could not be allowed out of the money in Court, but must be borne by those who had given the indemnity.

**IN RE WENIGER'S POLICY** (No. 2), [1910] [W. N. 278; 130 L. T. Jo. 150—Warrington, J.]

**XVII. POWER OF SALE.**

[No paragraphs in this vol. of the Digest.]

**XVIII. PRACTICE.**

[No paragraphs in this vol. of the Digest.]

**XIX. PRIORITIES.****(a) General.**

*See* **BANKERS**, No. 1; **COMPANIES**, No. 13; **LAND IMPROVEMENT**, No. 1; **POWERS**, No. 6.

**(b) Notice.**

*See* No. 5, *supra*.

**(c) Possession of Title Deeds.**

[No paragraphs in this vol. of the Digest.]

**XX. RECEIVER.**

*See* **METROPOLIS**, No. 21.

**XXI. REDEMPTION.****(a) Accounts and Costs.**

[No paragraphs in this vol. of the Digest.]

**(b) Clogging.**

**7. Public-house—Mortgage to Brewers—Tie Beyond Continuance of Security—Provision Precluding Redemption Before Specified Date.**—A mortgage deed provided that for thirty-one years from 1893, and for so long thereafter as any money should be due under the mortgage, the mortgagor would purchase exclusively from the mortgagee, his executors, administrators, or assigns, or his or their nominees, at prices fixed by the schedule thereto, all intoxicating liquors consumed or sold on the mortgaged premises. It was also provided that the mortgagor should not be entitled to pay off the mortgage money before 1924 unless the mortgagee should be willing to receive the same earlier. There was no similar provision as to the mortgagee not calling in the money, and the mortgagee had a power of sale without notice and subject to the tie on the happening of any of various events. In 1909 the mortgagor tendered the amount of principal and interest, with six months' interest in lieu of notice, but the mortgagee refused to accept same, contending that the mortgagor, in view of the provisions of the mortgage deed, was not entitled to redeem the security at that time.

**HELD**—that the clause precluding redemption before 1924 could not be enforced, and that the mortgagor was entitled to redeem at the date of the tender.

*Biggs v. Hoddinott* ([1898] 2 Ch. 307) distinguished.

**MORGAN v. JEFFREYS**, [1910] 1 Ch. 620; 79 [L. J. Ch. 369; 74 J. P. 151; 26 T. L. R. 324—Joyce, J.]

**8. Chartered Company—Debentures—Exclusive Licence to Work Diamond Mines.**—The plaintiffs, a chartered company, contracted, "in consideration of the assistance rendered and to be rendered" by the defendants, to grant to the defendants an exclusive licence to work all diamondiferous mines in the plaintiffs' territories. At that date the plaintiffs owed the defendants £112,000, and it was agreed that, in lieu of repayment of this and a proposed further advance of £100,000, debentures should be issued as a floating charge on all the plaintiffs' property.

**HELD**—that the agreement to grant the exclusive licence was part of the mortgage transaction under which the debentures were issued to the defendants, and that it was invalid as being a clog on the equity of redemption.

*Decision of Eady, J.* ([1910] 1 Ch. 354; 79 L. J. Ch. 345; 102 L. T. 95; 26 T. L. R. 285; 54 Sol. Jo. 289; 17 Manson, 190) affirmed.

**BRITISH SOUTH AFRICA CO. v. DE BEERS [CONSOLIDATED MINES, LD.]**, [1910] 2 Ch. 502; 103 L. T. 4; 26 T. L. R. 591; 54 Sol. Jo. 679—C. A.]

*See* S. C. under **COMPANIES**, No. 8.

**(c) Consolidation.**

*See* **BANKRUPTCY**, No. 23.

**XXII. RESTRICTIVE COVENANTS.**

*See* No. 7, *supra*.

**XXIII. SALE.**

[No paragraphs in this vol. of the Digest.]

**XXIV. SETTLED LANDS.**

**9. Infant Tenant in Tail in Remainder—Maintenance—Order of Court—Disentailing Deed by way of Mortgage—Jurisdiction.**—The Court has no power to direct a disentailing deed by way of mortgage of the estate of an infant tenant in tail in remainder.

*In re Hamilton* ((1885) 31 Ch. D. 291) and *Cudman v. Cudman* ((1886) 33 Ch. D. 397) followed.

**IN RE HAMBROUGH'S ESTATE, HAMBROUGH v. [HAMBROUGH]**, [1909] 2 Ch. 620; 79 L. J. Ch. 19; 101 L. T. 521; 53 Sol. Jo. 770—Warrington, J.]

*See* S. C. under **INFANTS**, No. 3.

**XXV. SOLICITOR MORTGAGEE.**

[No paragraphs in this vol. of the Digest.]

**XXVI. SURETY.**

[No paragraphs in this vol. of the Digest.]

**XXVII. TRANSFER.**

**10. Payment Off by Stranger—Agreement to Accept Different Mortgage—Ignorance as to**

**XXVII. Transfer—Continued.**

*Property and Ownership—Equitable Transfer—Presumption of Intention.*—B. advanced to R. £450 for the purpose of paying off a mortgage to a bank of certain properties at Bristol and Cardiff. B. was not aware of the Cardiff property, and believed that the Bristol property belonged to R., whereas in fact both properties belonged to Mrs. R. As security for the advance B. was to have a legal mortgage on the Bristol property for £300 and a guarantee by R. and Mrs. R.'s solicitor of £150. Mrs. R. did not know of the transaction and refused to execute a legal mortgage. B. brought an action against R., Mrs. R., and their solicitor who held the deeds as stakeholder for a declaration that he was entitled to a charge on the Bristol property to the extent of £450 with interest.

**HELD**—that the facts showed no intention on R.'s part to discharge the security which the bank had held, that the presumption was that R. intended to keep the security alive; and that he was entitled to the declaration asked for.

**BUTLER v. RICE**, [1910] 2 Ch. 277; 79 L. J. [Ch. 652; 103 L. T. 94—Warrington, J.]

**XXVIII. TRUSTEES.**

*See also* LIMITATION OF ACTIONS;  
MONEY AND MONEY-LENDERS;  
WILLS.

**MORTMAIN ACTS.**

*See* CHARITIES; REAL PROPERTY.

**MOTOR CARS.**

*See* STREET TRAFFIC, II.

**MUNICIPAL CORPORATIONS.**

*See* LOCAL GOVERNMENT.

**MUSIC HALLS.**

*See* THEATRES, MUSIC HALLS AND SHOWS.

**MUSICAL COPYRIGHT.**

*See* COPYRIGHT AND LITERARY PROPERTY.

**NAME.**

*See* WILLS.

**NATAL.**

*See* DEPENDENCIES AND COLONIES.

**NATURALISATION AND DENIZATION.**

*See* ALIENS.

**NAVIGABLE WATERS.**

*See* WATERS AND WATERCOURSES.

**NAVIGATION.**

*See* SHIPPING AND NAVIGATION.

**NAVY.**

*See* ROYAL FORCES.

**NEGLIGENCE.**

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*See also* BANKERS, No. 7; CARRIERS, No. 1; EDUCATION, Nos. 5, 6; MASTER AND SERVANT, Nos. 13, 38, 39, 127, 128, 130, 132, 133; MEDICINE, No. 4; PRACTICE, No. 32; SHIPPING, No. 26; SOLICITORS, No. 14; TRAMWAYS, No. 7.

**I. CONTRACTORS AND SUB-CONTRACTORS.**

*See* TRAMWAYS, No. 3.

**II. CONTRIBUTORY NEGLIGENCE.**

*See also* No. 17, *infra*; SHIPPING, Nos. 67, 68.

1. *Dangerous Article—Duty to take Precautions—Gas Explosion.*—In the case of articles

### II. Contributory Negligence—Continued.

dangerous in themselves, such as loaded firearms, poisons, explosives, and other things *ejusdem generis*, there is a peculiar duty to take precaution imposed upon those who send forth or install such articles when it is necessarily the case that other parties will come within their proximity. The duty being to take precaution, it is no excuse to say that an accident would not have happened unless some other agency than that of the defendant had intermeddled with the matter. On the other hand, if the proximate cause of the accident is not the negligence of the defendant but the conscious act of volition of another, the defendant is not liable, for against such conscious act of volition no precaution can really avail.

**DOMINION NATURAL GAS CO., LD. v. COLLINS**;  
[**SAME v. PERKINS AND OTHERS**, [1909] A. C. 640; 79 L. J. P. C. 13; 101 L. T. 359; 25 T. L. R. 831; 47 Sc. L. R. 583—P. C.]

2. *Child of Five Years.*—A child of five years may be guilty of contributory negligence if he does not take the care of himself which is to be expected of a child of that age, as, for example, if in broad daylight he runs up against an obvious obstacle in the pavement of a street.

**PLANTZA v. GLASGOW CORPORATION**, [1910]  
[S. C. 786; 47 Sc. L. R. 688—Ct. of Sess.]

### III. DANGEROUS EMPLOYMENT.

See No. 1, *supra*.

### IV. DEFECTIVE PLANT.

See also **MASTER AND SERVANT**, No. 132.

3. *Lift—Used by Tenants of Flats—Injury to Servant of Tenant—Liability of Landlord.*—The landlords of certain flats provided for the convenience of their tenants a lift for the purpose of raising articles supplied by tradesmen to the various flats. The lift was in the form of a box, with a weight on the top, and was pulled up and down from below. It ran outside the building in iron guides and communicated with the scullery windows of the flats, and it was the landlord's duty to keep it in repair. The plaintiff, a servant of one of the tenants of the flats, was on December 1st, 1909, signalled to go to the lift, and she accordingly went to the scullery window, and was in the act of taking out some articles from the lift when some one pulled it down, with the result that the top of it struck her on the head and injured her. In an action claiming damages from the landlords in respect of her injuries it was alleged that the landlords were negligent in having constructed and maintained the lift without the means of keeping it stationary at a window. Evidence was given that on the day in question the lift was not out of repair, and that it had been in use for eighteen years without any accident having occurred.

**HELD**—that the landlords had not been guilty of any negligence, and that the plaintiff was not entitled to recover.

**POWELL v. THORNDIKE AND OTHERS**, 102 L. T. 600; 26 T. L. R. 399—Div. Ct.

### V. LOCAL AUTHORITIES.

See also **HIGHWAYS**, Nos. 10, 11.

4. *Local Education Authority—Provided School—Conveyance of Children to School—Contract for Conveyance—Injury to Child—Negligence of Contractor—Education Act, 1902* (2 Edw. 7, c. 42), s. 23 (1).—The plaintiff, a girl of about thirteen years of age, was a pupil at a school maintained and kept by the defendants as the local education authority. The defendants, acting under the powers conferred upon them by sect. 23 (1) of the Education Act, 1902, entered into an agreement with a contractor for the conveyance to the school of children living more than two miles distant from the school. The contractor duly provided a conveyance, but it was not accompanied by a conductor or any other adult person than the driver. The plaintiff, who only lived about a mile from the school, was invited by the school attendance officer or was permitted by the driver to use, and did in fact use, the conveyance thus provided. While being so conveyed she was injured by falling off the step at the rear. This action was brought by her against the defendants for damages.

**HELD** (Vaughan Williams, L.J., dissenting), that the plaintiff was not a child coming within the terms of the resolution authorising the contract for the conveyance of the children; that the defendants were under no obligation to provide a conveyance for the plaintiff; that the plaintiff was a mere volunteer; and that there was no evidence that the plaintiff rode in the conveyance with the knowledge or consent of the defendants, or that the conveyance was unsafe for a girl of about thirteen years of age.

Decision of Channell, J., reversed.

**SHRIMPTON v. HERTFORDSHIRE COUNTY [COUNCIL]**, 74 J. P. 305; 8 L. G. R. 710—C. A.

5. *Local Education Authority—Accident to Child—Liability of Teacher.*—The plaintiff, a child of fourteen, was being educated at a public elementary school under the control of the defendant corporation as local education authority. The defendant Martin was a teacher in the school, who had charge of the plaintiff. In obedience to the teacher's request the plaintiff poked a fire and opened a damper in the teacher's room, and in doing so her apron caught fire and she was injured. In an action for negligence, a jury found that the teacher's request was not reasonable, and gave a verdict for the plaintiff.

**HELD**—that as on the evidence the teacher wanted the fire made up for her own purposes, and her action in having it made up was not necessary for the purposes of the school, judgment should be entered for the defendant corporation, but for the plaintiff as against the teacher.

**SMITH v. HULL CORPORATION AND MARTIN**, [74 J. P. N. C. 628—Lawrance, J.]

6. *Defective Stop-cock Box in Pavement—Duty of Water Board.*—The plaintiff was injured by catching her foot in an open stop-cock box which had been placed in the pavement, under

### V. Local Authorities—Continued.

statutory authority, by the defendants' predecessors. In an action for damages it was proved that stop-cock boxes of the particular kind had been used for many years, and that it was the practice to fill up the space between the top of the spindle and the level of the pavement with a wad, consisting of a wisp of straw having earth or mud over it. Upon the occasion of the accident to the plaintiff, the filling over the stop-cock did not reach to the level of the pavement. The county court judge held that although the box had originally been properly constructed it had not been properly maintained by the defendants; he was accordingly of opinion that it constituted a nuisance, and he gave judgment for the plaintiff. On appeal by the defendants:—

**HELD**—dismissing the appeal, that it was open to the county court judge to come to the conclusion that the true inference to be drawn from the facts was that on the last occasion when the stop-cock box was dealt with by the defendants either no wad or an insufficient wad was put in, and that it was as a consequence of that that the accident happened.

**OSBORN v. METROPOLITAN WATER BOARD**, 102 [L. T. 217; 74 J. P. 190; 26 T. L. R. 283—Div. Ct.]

**7. Defective Stop-cock Box in Pavement—Duty of Water Board.**—The plaintiff was injured by catching her foot in one of the defendant's stop-cock boxes placed in the pavement. In an action claiming damages in respect of those injuries it was proved that it was the practice of the defendants to fill up the space between the top of the stop-cock and the pavement with a wisp of straw. The instructions of the defendants were that the whole of the boxes should be rewadded when necessary three times a year. At the time of the accident to the plaintiff there was no proper wisp of straw over the stop-cock, and on the evidence the judge came to the conclusion that a sufficient wisp of straw had not been put in on the last occasion when the stop-cock box was dealt with by the defendants.

**HELD**—that the plaintiff was entitled to recover, inasmuch as the stop-cock box was in fact dangerous through not having the protection which the public had become accustomed to expect, due to the failure of the defendants to put a sufficient wisp of straw in the hole.

**HELD FURTHER**—that there was a duty on the defendants to keep the plugging of the stop-cock box in order.

**ROSENBAUM v. METROPOLITAN WATER BOARD**, [103 L. T. 284; 74 J. P. 378; 26 T. L. R. 510; 8 L. G. R. 735—Channell, J.]

On appeal, the Court of Appeal, being of opinion that the question could not be satisfactorily determined on the judge's findings of fact, ordered a new trial—27 T. L. R. 103, C. A.

**8. Fire-plug—Mark not Indicating Correct Position of Fire-plug—Fire-plug in Private Road Covered up—Fire—Damage—Liability of Local Authority—Public Health**

*Act, 1875 (38 & 39 Vict. c. 55), s. 66.*—In a road which had not been taken over by the local authority there was a fire-plug, which, however, at the material time was buried in the earth to the depth of 6 inches. This had not been done by, or with the knowledge of, the defendants. A plate with the letters and figures "F.P. 22ft." had been put up in the road by the defendants (who were also the water authority), but the fire-plug was some feet out of position in relation to the plate, although any one following the line from the plate would have seen the plug had it not been covered up. A fire having broken out on the plaintiff's premises, the fire brigade arrived, but, owing to the difficulty of finding the exact position of the fire-plug, the efforts of the brigade to extinguish the fire were considerably retarded, and the damage to the plaintiff's property was largely increased. In an action by the plaintiff to recover damages from the defendants for breach of duty:—

**HELD**—that the action failed inasmuch as (1) the defendants were not responsible for the covering up of the fire-plug, and (2) the wrong situation of the plate was not the *causa causans* of the injury complained of.

**DAWSON v. BINGLEY URBAN DISTRICT COUNCIL**, 27 T. L. R. 46; 8 L. G. R. 1118—Grantham, J.]

**9. Ice on Street—Averment of Failure to Regulate Flow of Fountain—Relevancy.**—A woman slipped on a piece of ice which had formed on the pavement near a fountain, and fell, sustaining fatal injuries. Her husband and certain of her children raised an action against the magistrates of the city, who had sole control of the fountain and the cleansing of the streets, in which they averred that it was the defenders' business so to regulate the fountain as to prevent an overflow, and that the ice must have been caused by an overflow.

**HELD**—that the pursuers' averments were irrelevant.

**O'KEEFE v. LORD PROVOST AND MAGISTRATES [OF EDINBURGH]**, 48 Sc. L. R. 50—Ct. of Sess.]

### VI. LICENSEES AND VISITORS.

**10. Field Adjoining Highway—Permission to Children to Play in Field—Gate between Field and Adjoining Railway Left Open—Child Injured by Straying from Field on to Railway.**—In a field belonging to the defendants, and abutting on a highway, children were in the habit of playing. A cart track crossed the field to a level crossing over a railway, which the defendants' carts were constantly using. The plaintiff, a child of one year and nine months, who had been playing in the field, wandered to the level crossing, and then along the railway line, where she was injured by a passing train. There was no evidence that any child playing in the field had ever before gone over the level crossing.

**HELD**—that the plaintiff was not entitled to recover, inasmuch as the facts did not establish



### V1. Licensees and Visitors—Continued.

any duty on the part of the defendants towards the plaintiff, and there was no evidence that the accident was in fact caused by any act or omission of the defendants' servants.

*Cooke v. Midland Great Western Railway of Ireland* [1909] A. C. 229 considered.

Decision of Lord Coleridge, J., reversed.

*SCHOFIELD v. MAYOR, ETC., OF BOLTON*, 26 [T. L. R. 230; 54 Sol. Jo. 213—C. A.

**11. Landlord and Tenant—Negligence—Duty to Public—Incitation—Owner's Liability to Public where Premises Let to Various Tenants—Averments—Relevancy.**—A boy was sent to collect parcels from certain tenants in a tenement let out as offices to a number of business men and traders and was there injured by falling into the well of a lift. In an action for damages brought against the landlords, it was averred that the accident was caused by the defective working of an automatic gate fencing the entrance to the lift, and that this defective working of the gate was well known to the landlords at the time of the accident, or should have been ascertained by them had the lift been frequently inspected in a regular and proper manner, as it should have been.

HELD—that there was no relevant case against the landlords based on faulty construction of the lift as no faults in construction were averred, but that an issue should be allowed, as, under the averments, the pursuer might be able to show that the defenders had remained responsible for the lift when letting out the various premises.

*MATHIESON'S TUTOR v. AIKMAN'S TRUSTEES*, [1910] S. C. 11; 47 Sc. L. R. 36—Ct. of Sess.

### VII. LORD CAMPBELL'S ACT.

**12. Common Employment—Workman Killed on Train Belonging to Employers—Returning Home from Work—Negligence of Fellow Servants—Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93).**—A workman was travelling by a train belonging to the owners of the colliery at which he worked when he met his death by an accident due to the negligence of some other servants of the company employed in repairing a bridge under which the train passed. His mother claimed damages under Lord Campbell's Act.

HELD—that the doctrine of common employment was an answer to the claim, and that the defendants were not liable; the accident having happened on the colliery premises, though the workman had at the time left off work and was on his way home.

Decision of C. A. ([1909] 1 K. B. 530; 78 L. J. K. B. 452; 100 L. T. 314; 25 T. L. R. 218; 53 Sol. Jo. 214) affirmed.

*COLDRICK v. PARTRIDGE, JONES & CO., LD.* [1910] A. C. 77; 79 L. J. K. B. 173; 101 L. T. 835; 26 T. L. R. 164; 54 Sol. Jo. 132; 47 Sc. L. R. 610—H. L.

**13. Apportionment of Damages—Practice—Settlement between Parties—Fatal Accidents Act,**

1846 (9 & 10 Vict. c. 93), s. 2.]—Where damages have been paid in settlement of an action taken under Lord Campbell's Act the Court will not, on an application made in pursuance of the terms of the settlement, by the mother of certain minors to whom the damages had been agreed to be paid, apportion such damages amongst the dependants (the widow and the said minors), as the apportionment of damages recovered under the Act is expressly reserved by s. 2 to a jury.

*LOGAN v. GREAT NORTHERN RY. CO. OF IRELAND*, 44 I. L. T. 190—Palles, L. C. B., Ireland.

### VIII. ONUS OF PROOF.

[No paragraphs in this vol. of the Digest.]

### IX. PROXIMATE CAUSE.

See No. 8, *supra*.

### X. RAILWAY MANAGEMENT.

**14. Level Crossing—Defective Gate—Horse Killed by Straying on to Railway—Breach of Statutory Duty—Railways Clauses Consolidation Act, 1845 (8 Vict. c. 20), s. 61.**—The plaintiff's horse escaped through a gate in his field some 400 yards from a railway, and after proceeding along a public footway for a distance of 400 yards it strayed on to the railway owing to the defective condition of a gate erected by the defendants at a level crossing and was killed by a passing train.

HELD—that the defendants were liable for the value of the horse, inasmuch as they had been guilty of a breach of the duty imposed upon them by sect. 61 of the Railways Clauses Consolidation Act, 1845, to maintain a good and sufficient gate at the level crossing.

*PARKINSON v. GARSTANG AND KNOTT END RY.* [Co., [1910] 1 K. B. 615; 79 L. J. K. B. 380; 102 L. T. 234; 74 J. P. 204; 26 T. L. R. 290—Div. Ct.

### XI. TRESPASSERS.

See ANIMALS, No. 9.

### XII. VEHICLES—OWNERS AND DRIVERS.

**15. Personal Injury by Skidding of Motor Omnibus—Nuisance.**—The plaintiff stepped out into the road in front of a motor omnibus belonging to the defendants, whereupon the driver, to avoid running over the plaintiff, steered to his off-side, released the clutch, applied the brakes, and locked the back wheels, with the result that the omnibus skidded and in doing so struck the plaintiff and injured him. At the trial of an action brought by the plaintiff against the defendants to recover damages, the judge left to the jury the question as to whether the driver was negligent, and the further question as to whether the defendants had placed a nuisance on the highway, the omnibus having skidded and being liable to skid and cause injury without any negligence on the part of the driver. The jury found that there had been no negligence on the part of the driver, and disagreed upon the question of nuisance.

HELD—that upon these findings judgment should be entered for the defendants, and that

**XII. Vehicles—Owners and Drivers—Continued.** the question of nuisance should not have been left to the jury at all.

Decision of Div. Ct. (100 L. T. 409; 73 J. P. 283; 25 T. L. R. 429) affirmed.

**PARKER v. LONDON GENERAL OMNIBUS CO.**  
[Ld., 101 L. T. 623; 74 J. P. 20; 26 T. L. R. 18; 53 Sol. Jo. 867; 7 L. G. R. 1111—C. A.]

**16. Tramway Driver—Failure to Stop Tram when Insufficient Room to Pass—No Evidence to go to Jury.**—The driver of an electric tramcar saw an obstruction ahead. Being uncertain whether there was room to pass it, he went dead slow. After the front of his car had safely passed the obstruction, a man who had a better opportunity of judging whether it was safe to proceed shouted to him to go ahead. In the result the tramcar struck the obstruction and the plaintiff was injured.

**HELD**—there was no evidence of negligence to go to the jury.

**LEAVER v. PONTYPRIDD URBAN DISTRICT COUNCIL**, 74 J. P. 199—Pickford, J.

Affirmed on appeal, 74 J. P. N. C. 544—C. A.

**17. Contributory Negligence—Lorry coming out of Works run into by Motor Car going at Excessive Speed—Fault on Part of Lorryman.**—A lorry while coming out of certain works into a main road was run down by a motor car travelling at an excessive rate of speed. The carter in charge did not look to see what traffic was coming before leading out the horse and lorry. The carter and the owners of the lorry having raised actions of damages against the owner of the motor car:—

**HELD**—that the pursuers had been guilty of contributory negligence.

**CAMPBELL v. TRAIN, COWAN v. TRAIN**, [1910] S. C. 556; 47 Sc. L. R. 475—Ct. of Sess.

### XIII. MISCELLANEOUS.

**18. Cricket-Playing—Unsuitable Place.**—A father brought an action concluding for damages against four defenders, a man and three little boys, jointly and severally, or severally, in respect of personal injury caused to his pupil child. The pursuer averred that his child, while sitting in his back-green, had been struck by a cricket ball which had been hit from a neighbouring back-green belonging to the major defender; that at the time of the accident the defenders were engaged in playing in the major defender's back-green, and that the ball was hit by one of them, whose name was unknown to the pursuer. The pursuer also averred that the defenders knew or should have known that it was "a highly dangerous and unlawful thing to play a game of cricket in a small enclosed place, such as was being done here," and that they took no precautions to warn the neighbours that there was danger of the cricket ball being hit into such a position as might cause them injury.

**HELD**—that as it was not illegal to play cricket in a back-green, and there were no averments to show that it was being played in an

illegal way, the pursuer's averments were irrelevant, and the action must be dismissed.

**WARD v. ABRAHAM AND OTHERS**, [1910] S. C. 299; 47 Sc. L. R. 252—Ct. of Sess.

## NEGOTIABLE INSTRUMENTS.

See **BILLS OF EXCHANGE, ETC.**

## NEWFOUNDLAND.

See **DEPENDENCIES AND COLONIES.**

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## NOTARIES.

**1. Appointment of District Notary Public—Rochdale—Second Notary Public where only one already Practising—Rule in Faculty Office.**—An application for appointment as a district notary public for Rochdale, a town ten miles distant from Manchester, but having only one resident notary public for a population of over 83,000, with seven banks whose managers signed a memorial in favour of the application, was granted as for Rochdale and a district within a radius of five miles from Rochdale town hall.

**IN RE ROCHDALE NOTARIES, HUDSON v. BOUTFLOWER**, [1910] W. N. 228—Ct. of Faculties.

**NOTICE OF DISHONOUR.***See* **BILLS OF EXCHANGE.****NOTICE TO QUIT.***See* **LANDLORD AND TENANT.****NOVATION.***See* **CONTRACT.****NUISANCE.**

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*See also* **HIGHWAYS**, Nos. 10, 12, 17;  
**METROPOLIS**; **NEGLIGENCE**; **PUBLIC**  
**AUTHORITIES**, No. 1; **PUBLIC HEALTH**.  
**V.**; **WATERS**, No. 6.

**I. WHAT AMOUNTS TO.***See also* II. (b), *infra*.

1. *Motor Omnibus—Skidding—Skidding due to Sudden Emergency.*—The skidding of a motor omnibus upon a greasy road, where there is no negligence on the part of the driver and the skidding is due to the precautions taken by the driver to bring the vehicle to a sudden stop in order to avoid an accident, is no evidence that the particular vehicle is a nuisance for the placing of which on the highway the owners are liable if damage ensues.

Decision of Div. Ct. (100 L. T. 409; 73 J. P. 283; 25 T. L. R. 429) affirmed.

**PARKER v. LONDON GENERAL OMNIBUS CO.**,  
 [101 L. T. 623; 74 J. P. 20; 26 T. L. R. 18;  
 53 Sol. Jo. 867; 7 L. G. R. 1111—C. A.]

*See* S. C. under **NEGLIGENCE**, No. 15.

2. *Motor Omnibuses—Noise and Vibration.*—The excessive user of certain streets by the defendants for turning, shunting, standing, adjusting, and repairing their motor omnibuses held to be an actionable nuisance.

**ROBINSON v. LONDON GENERAL OMNIBUS CO.**,  
 [Ld., 74 J. P. 161; 26 T. L. R. 233—Neville, J.]

3. *Highway—Loading and Unloading Goods—Excessive User.*—Whether the extent of the user of a public street in front of business premises for the purpose of loading and unloading goods is excessive is a question of fact, and

in answering that question all the circumstances of the case have to be taken into consideration.

**ATTORNEY-GENERAL v. W. H. SMITH & SON**, 103  
 [L. T. 96; 74 J. P. 313; 26 T. L. R. 482; 8  
 L. G. R. 679—Neville, J.]

**II. REMEDIES.****(a) Indictment.**

[No paragraphs in this vol. of the Digest.]

**(b) When Action Lies.**

4. *Demolition of Upper Portion of Building—Damage to Goods and Business of Tenant of Ground Floor—Independent Contractor—Liability of Building Owner.*—The plaintiff rented from the defendants a shop on the ground floor of a building. For their own purposes the defendants decided to pull down a great part of the building above the plaintiff's shop, and they employed a contractor to execute the work. In consequence of the work, damage was done to the plaintiff's business and goods, and in respect of this he sued the defendants. The county court judge held that the defendants were liable inasmuch as they had not taken all the precautions they might have taken to prevent the mischief.

**HELD**—(1) that although the defendants had employed an independent contractor to execute the work, from which in the natural course of things injurious consequences might be expected to arise, there was still a duty upon the defendants to prevent the execution of that work from becoming wrongful; and (2) that there was evidence upon which the county court judge could find that the defendants had not taken the precautions they might have taken to prevent mischief arising to the plaintiff.

**ODELL v. CLEVELAND HOUSE, LD.**, 102 L. T.  
 [602; 26 T. L. R. 410—Div. Ct.]

5. *Noise—Private Hotel—Early Building Operations—Injunction.*—The plaintiff brought an action against his lessor, who owned neighbouring premises which were being rebuilt and caused serious annoyance and pecuniary loss to the plaintiff by allowing noisy work to be carried on in the early morning during the summer. On motion for an interim injunction to restrain him from starting noisy operations before 7 or 7.30 a.m. :—

**HELD**—that the injunction must be refused.

**Browning and Heseltine v. Harrod's Store**,  
*(Times, August 13th, 1902)* followed.

**CLARK v. LLOYDS BANK, LD.**, [1910] W. N.  
 [187; 79 L. J. Ch. 645; 103 L. T. 211; 74  
 J. P. 429; 54 Sol. Jo. 704—Joyce, J.]

**(c) Damages.**

*See* No. 4, *supra*, No. 6, *infra*.

**(d) Injunction.**

*See also* No. 5, *supra* 1

6. *Noise—Injury to Health—Damages—Injunction.*—Where the plaintiff proved a case of substantial injury to her business and to her

**II. Remedies—Continued.**

health by the noise occasioned by the way in which the defendant's business was carried on, the Court granted an injunction against the continuance of the nuisance, and also gave the plaintiff damages in respect of past injury.

GILLING *v.* GRAY, 27 T. L. R. 39—Eady, J.

**NULLITY OF MARRIAGE.**

*See* HUSBAND AND WIFE.

**OATHS AND AFFIRMATIONS.**

*See* CRIMINAL LAW ; EVIDENCE ; PRACTICE AND PROCEDURE.

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*See* CRIMINAL LAW AND PROCEDURE.

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*See* CRIMINAL LAW AND PROCEDURE.

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*See* NEGLIGENCE ; STREET TRAFFIC.

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*See* DEPENDENCIES AND COLONIES.

**OPEN SPACES AND RE-CREATION GROUNDS.**

*See* COMMONS, No. 2.

**OVERSEERS.**

*See* POOR LAW.

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**PARENT AND CHILD.**

*See* BASTARDY ; INFANTS.

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**PARTICULARS.**

*See* AUCTIONS ; COUNTY COURTS ; PLEADING ; PRACTICE AND PROCEDURE ; SALE OF LAND.

**PARTITION.**

1. *Partition Action—Practice—Costs—Shares Incumbered.*—In a partition action where any of the shares are incumbered only one set of costs should, in the absence of special circumstances, be allowed for each share and not a separate set of costs for each incumbrancer as well.

*Catton v. Banks* ([1893] 2 Ch. 221) followed. *Belcher v. Williams* ((1890) 45 Ch. D. 510) not followed.

*CARROLL v. HARRISON*, [1910] W. N. 104 ; 45 [L. J. N. C. 291 ; 128 L. T. Jo. 547—Joyce, J.



## PARTNERSHIP.

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## I. CONSTITUTION OF PARTNERSHIP.

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## II. RIGHTS AND LIABILITIES OF PARTNERS.

See also TRUSTS, No. 3.

## (a) Accounts.

[No paragraphs in this vol. of the Digest.]

## (b) Authority.

[No paragraphs in this vol. of the Digest.]

## (c) Expulsion.

1. *Breach of Articles—Flagrant Breach of Duty—Power to Expel Partner—Notice—Validity—No Previous Specification of Causes of Complaint.*—Where by articles of partnership either partner is entitled to give notice in writing to determine the partnership if the other partner commits a breach of any of the stipulations contained therein or any flagrant breach of his duties as a partner, provided that the latter may within three days of receiving the notice require that the question of any alleged breach be referred to arbitration, it is not necessary, in the absence of bad faith on the part of the partner giving such a notice, that he should, before giving it, specify the causes of complaint or give the other partner an opportunity of defending himself.

*Barnes v. Youngs* ([1898] 1 Ch. 414) commented on.

Decision of Neville, J., affirmed.

*GREEN v. HOWELL*, [1910] 1 Ch. 495; 79 L. J. [Ch. 549; 102 L. T. 347—C. A.

## (d) Retiring Partner.

[No paragraphs in this vol. of the Digest.]

## (e) Surviving Partner.

[No paragraphs in this vol. of the Digest.]

## (f) In General.

2. *“Ordinary Matter connected with Partnership Business”—Decision of Majority—Admission to Partnership Works of Partner’s Son—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 24 (8).*—In a partnership consisting of three members, two of the partners resolved to introduce into the partnership works a son of one of these partners, with a view to his learning the business. The third partner objected to this being done.

HELD—that the difference between the partners was as to an “ordinary matter connected with the partnership business,” within the meaning of sect. 24 (8) of the Partnership Act, 1890, on which, therefore, the decision of the majority was binding.

*HIGHLEY v. WALKER*, 26 T. L. R. 685.—Warrington, J.

## III. CONTRACTS WITH PARTNERS.

3. *Agreement to Take Pupil—Payment of Premium—Dissolution of Firm—Failure of Consideration—Right to Recover Premium.*—A. and B. were partners in a firm carrying on business as auctioneers and surveyors. A., without the knowledge or authority of his partner, entered into an agreement with the plaintiffs (a father and son) by which the son was to become an articulated pupil to the firm, and an indenture of apprenticeship was drawn up by the terms of which, in consideration of the payment of a premium, the son was to become the pupil of B. The indenture was never signed by A. or B., and B. was ignorant of its existence. The premium was duly paid by the plaintiffs to A., and by him handed over to B. in bank notes to be paid into the firm’s banking account without any statement as to whence it came. B. took the money thinking that it was money due to the firm in connection with some partnership transaction. Subsequently the partnership was dissolved and the business wound up. In an action by the plaintiffs against B. for a return of the premium upon the ground that there had been a total failure of the consideration for which it was paid.

HELD—that the plaintiffs were entitled to recover the money.

*COVELL v. SCAMELL*, 103 L. T. 535—Div. Ct.

## IV. DISSOLUTION.

See also ARBITRATION, No. 5.

4. *Duration of Partnership Undefined—Dissolution to be by Mutual Consent—Notice of Dissolution—Validity—Partnership Act, 1890 (53 & 54 Vict. c. 39), ss. 26, 32.*—Although no fixed term is agreed upon for the duration of a partnership within the meaning of sect. 26 of the Partnership Act, 1890, yet, as the partnership is therefore to continue for an undefined time within the meaning of sect. 32, if there be an agreement between the partners as to dissolution

#### IV. Dissolution—Continued.

by mutual consent only, a mere notice dissolving the partnership, without consent, is not a good one.

Decision of Div. Ct. ([1910] 1 K. B. 465; 79 L. J. K. B. 329; 102 L. T. 80) affirmed.

MOSS v. ELPHICK, [1910] 1 K. B. 846; 79 L. J. [K. B. 631; 102 L. T. 639—C. A.

5. *Death of Partner—Surviving Partner appointed Executor—Valuation of Interest—Goodwill—New South Wales.*—A partnership agreement between two brothers provided by clause 17 that within thirty days after the death of either partner a general account in writing should be taken of the partnership assets and debts, and that in taking such account the stock should be valued either by mutual agreement or valuation in the usual way, nothing being charged for goodwill, and the surviving partner should pay to the executors or administrators of the deceased partner his full share. On the death of one partner the surviving partner, who was also the deceased's executor, took an account of the partnership assets in the same way as the half-yearly balance-sheets had for several years been taken while both partners were alive, the only difference being that the surviving partner appointed a gentleman of wide business experience and of the highest character to check the valuation. The sum found to be due to the deceased partner's estate was duly paid.

HELD—that the valuation had been properly carried out, and that clause 17 had been complied with; and that it was not open to the residuary legatees of the deceased partner to contend that, by his appointment of the surviving partner as his executor, and the consequent dual character of the surviving partner, the clause was inoperative and therefore that goodwill should have been included in the valuation.

HORDERN v. HORDERN, [1910] A. C. 465; 80 [L. J. P. C. 15; 102 L. T. 867; 26 T. L. R. 524—P. C.

6. *Partnership Action—Receiver and Manager—Appointment by Consent Order—Indemnity in Respect of Payments—Assets Insufficient—Subrogation.*—A receiver and manager appointed by a covenant order in a partnership action, who pays debts and incurs liabilities, is not in the same position with regard to indemnity and re-imbursement as a person in a fiduciary capacity who so acts. The receiver and manager is an officer of the Court, and does not become an agent of the partners by reason of their consenting to his appointment. He is personally bound by the obligations which he incurs, and can only look for indemnity to the assets under the control of the Court and not to the partners personally. Nor can he claim to be subrogated to the rights of the partnership creditors whose debt he has paid.

BOEHM v. GOODALL, [1910] W. N. 259; 27 T. [L. R. 106; 55 Sol. Jo. 108—Warrington, J.

#### V. GOODWILL.

See No. 5, *supra*.

### PARTY WALLS.

See BOUNDARIES; EASEMENTS; METROPOLIS.

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**5. Other Cases . . . . . 459****XVI. REVOCATION . . . . . 460***See also SALE OF GOODS, No. 3; TRADE MARKS.***I. SPECIFICATION.****(1) Amendment and Disclaimer.**

**1. Leave to Amend Specification—Terms—Costs—Form of Order—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 22—R. S. C., Ord. 53A, r. 23.]**—Following upon an action in which it was held that certain of the plaintiffs' claims in their specification for razors were bad, the plaintiffs now moved the Court under sect. 22 of the Patents and Designs Act, 1907, for leave to amend their specification by striking out eight of the claiming clauses, and materially altering two others:—

**HELD**—that they could have liberty to amend as asked, on the terms that the costs of and occasioned by the application, including the costs of the defendants and any person appearing under Order 53, be paid by the plaintiffs, and that the costs of all pending actions for infringement of patent be paid to date and the actions discontinued; the plaintiffs undertaking not to claim relief in respect of any razor purchased by, or in the hands of, any ordinary member of the public prior to the date on which the motion was first before the Judge.

**GILLETTE SAFETY RAZOR Co. v. LUNA [SAFETY RAZOR Co., LD., [1910] 2 Ch. 373; 79 L. J. Ch. 672; 103 L. T. 105; 27 R. P. C. 527—Parker, J.**

**(2) Construction.**

**2. Form of Specification—Ambiguity.]**—Observations by Lord Loreburn, L.C., as to the form of specifications.

**HOPKINS v. LINOTYPE AND MACHINERY, LD., [101 L. T. 898; 26 T. L. R. 229; 27 R. P. C. 109; 47 Sc. L. R. 622—H. L.**

**(3) Disconformity.**

[No paragraphs in this vol. of the Digest.]

**II. GRANT: APPLICATION, OPPOSITION AND REVOCATION.***See Nos. 10, 11, 13, infra.***III. SUBJECT-MATTER.****(1) Invention.**

[No paragraphs in this vol. of the Digest.]

**(2) Combination.**

[No paragraphs in this vol. of the Digest.]

**(3) Novelty.**

**3. Design—"New or Original"—"Original Design"—New Use of Old Pattern—Patents and**

**Designs Act, 1907 (7 Edw. 7, c. 29), ss. 49, 50, 93.]**—The word "original" in sect. 49 of the Patents and Designs Act, 1907, contemplates that by the exercise of intellectual activity the person has started an idea which had not occurred to any one before that a particular pattern or shape or ornament may be rendered applicable to the particular article to which he suggests that it shall be applied. If that state of things is satisfied, the design may be "original," although the actual picture or shape which is being considered is old in the sense that it has existed with reference to another article before. But the mere application of a well-known pattern to an article in common use, not involving the exercise of any intellectual activity, does not constitute an "original design" within the meaning of the section.

Decision of Warrington, J. (54 Sol. Jo. 250; 27 R. P. C. 175) reversed.

**DOVER, LD. v. NÜRNBERGER CELLULOID- [WAREN FABRIK GEBRÜDER WOLFF, [1910] 2 Ch. 25; 79 L. J. Ch. 625; 102 L. T. 634; 26 T. L. R. 470; 54 Sol. Jo. 504; 27 R. P. C. 498—C. A.**

**4. Design—Alleged Infringement—Novelty and Originality Admitted—Purpose of Design—State of Knowledge at Date of Registration—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 60, sub-s. 1.]**—The plaintiffs, who were the proprietors of a design which was registered in the year 1906 for the shape or configuration of a cabinet for gramophones (or other sound-recording or reproducing machines) and accessories, brought an action against the defendants for an injunction to restrain the alleged infringement thereof.

The defendants, while admitting that the plaintiffs' design was a new and original design not previously published in the United Kingdom, contended that the purpose of the plaintiffs' cabinet must be disregarded; that externally the design substantially related to what was described as the Sheraton type of furniture; and that any features of it that were not matters of common knowledge at the date of the registration did not occur in the cabinet made by the defendants.

**HELD** (Moulton, L.J., dissenting)—that, having regard to the form of the interior as well as that of the exterior of the plaintiffs' design and the defendants' article respectively, there were sufficient material and substantial alterations to show that the defendants had not infringed the plaintiffs' design.

**Hecla Foundry Co. v. Walker, Hunter, and Co. (1889) 14 App. Cas. 550** considered and applied.

Decision of Warrington, J., affirmed.

**GRAMOPHONE Co., LD. v. MAGAZINE HOLDER [Co., 102 L. T. 409; 27 R. P. C. 152—C. A.**

**IV. ANTICIPATION: PRIOR USE OR PRIOR PUBLICATION.**

[No paragraphs in this vol. of the Digest.]

**V. FIRST AND TRUE INVENTOR.**

[No paragraphs in this vol. of the Digest.]

## VI. UTILITY.

[No paragraphs in this vol. of the Digest.]

## VII. ASSIGNMENT OR SALE, AND CONSTRUCTION OF AGREEMENTS THEREFOR.

[No paragraphs in this vol. of the Digest.]

## VIII. LICENCE.

5. *Covenant to Communicate Improvement*—“Improvement”—*Infringement*.]—Anything which makes a patented machine more effective, useful, or valuable is an “improvement” to that machine, and falls under a covenant to “communicate” and “give the exclusive benefit of” every improvement to a patented machine, though such improvement might be used without involving an infringement of the former patent.

Decision of C. A. (25 R. P. C. 665) affirmed.

HOPKINS v. LINOTYPE AND MACHINERY, LD.,  
[101 L. T. 898; 26 T. L. R. 229; 27 R. P. C.  
109; 47 Sc. L. R. 622—H. L.

## IX. PROLONGATION AND RESTORATION.

6. *Lapse—Omission to Pay Renewal Fee—Application for Restoration*—“Unintentional Omission”—*Appeal—Jurisdiction—Patents and Designs Act*, 1907 (7 Edw. 7, c. 29), s. 20.]—A patentee, having omitted to pay the renewal fee upon a patent which consequently lapsed, applied for its restoration under sect. 20 of the Patents and Designs Act, 1907, which provides for the restoration of a patent in cases where there has been an unintentional omission to pay the renewal fee. The patentee pleaded that he had not paid the fee through being under the impression that as he had made an application for letters patent for practically the same invention with improvements, it was unnecessary for him to keep his earlier patent alive.

HELD—that as the omission to pay the fee was deliberate, and not unintentional, relief could not be granted, and that the reasons which lead to the patentee not paying the fee were immaterial.

*Quære*, whether an appeal lies from the Comptroller-General's refusal to advertise such an application under the above section.

IN RE LAND'S PATENT, [1910] 2 Ch. 236; 79  
[L. J. Ch. 594; 103 L. T. 102; 54 Sol. Jo.  
680; 27 R. P. C. 481—Parker, J.

## X. MEASURE OF DAMAGES.

7. *Infringing Parts—Gas Meter—Whole Profits on Sale of Meter—Profits Attributable to Infringing Parts only—Other Devices Equally Effective*.]—In the assessment of damages for infringement of parts of a prepayment gas meter, it was contended by the defendants that the profits attributable to the infringing parts were only one forty-fourth of the whole profits on the sale of the gas meters, and that the functions of the infringing parts could have been performed equally well by other mechanism, the use of which would not have been an infringement.

HELD—that the profit on the whole gas meter was the proper factor for the purpose of calculating damages for infringement, and that the contention that similar results might have been otherwise obtained was no answer to a claim by a person whose invention had been infringed.

METERS, LD. v. METROPOLITAN GAS METERS,  
[LD., 27 R. P. C. 721; 129 L. T. Jo. 592—  
Eve, J.

## XI. ACTION TO RESTRAIN THREATS.

8. *Practice—Undertaking to Issue Writ in Infringement Action—Amendment of Patent—Patents and Designs Act*, 1907 (7 Edw. 7, c. 29), s. 36.]—The commencement of an infringement action is sufficient to satisfy the proviso to sect. 36 of the Patents and Designs Act, 1907, even though the patent has been amended subsequently to the institution of proceedings.

HALL v. STEPNEY SPARE MOTOR WHEEL, LD.,  
[27 R. P. C. 233; 128 L. T. Jo. 410—Eve, J.

## XII. PRACTICE.

See also Nos. 1, 8, *supra*.

## (1) Costs.

[No paragraphs in this vol. of the Digest.]

## (2) In General.

9. *Lapsed Patent—Application for Restoration—Refusal by Comptroller-General—Appeal—Patents and Designs Act*, 1907 (7 Edw. 7, c. 29), s. 20.

*Quære*, whether an appeal lies from the Comptroller-General's refusal to advertise an application for restoration of a lapsed patent under sect. 20 of the Patents and Designs Act, 1907.

IN RE LAND'S PATENT, [1910] 2 Ch. 236; 79  
[L. J. Ch. 594; 27 R. P. C. 481—Parker, J.

See S. C., No. 6, *supra*.

## (3) Interlocutory Injunctions.

See No. 10, *infra*.

## (4) On Petition for Revocation.

10. *Appeal from Decision of Comptroller-General—Extension of Time for Appeal—Whether Period of Vacation Counts in Time Within which Appeal is to be Brought—Special Circumstances—Patents and Designs Act*, 1907 (7 Edw. 7, c. 29), ss. 20, 26, 27—*R. S. C., Ord.* 53A, r. 4; *Ord.* 64, r. 5.]—Order 53A, r. 4, provides that all appeals to the Court from any decision of the Comptroller-General of Patents and Designs under sects. 20, 26, and 27 of the Patents and Designs Act, 1907, shall be brought by petition presented to the Court within one calendar month of the decision of the comptroller or within such further time as the Court may under special circumstances allow.

The question to be determined under this summons was whether (1) the period of vacation counted in the month within which the appeal



## XII. Practice—Continued.

was to be brought, and (2) whether the dilatoriness of the petitioner's agents amounted to "special circumstances" as required by Ord. 53A, r. 4.

**HELD**—that the period of vacation did count; and that the dilatoriness of the agents did not amount to special circumstances, as it did not materially affect the petitioner's position since he had a remedy under another section of the Act, if he desired to get the patent revoked, by a petition to the Court under a *fiat* of the Attorney-General.

**IN RE BELDAM'S PATENT. TURNER v. BELDAM.**  
[1911] 1 Ch. 60; [1910] W. N. 225; 103 L. T. 454; 55 Sol. Jo. 46; 27 R. P. C. 758—Parker, J.

## XIII. COMMITTAL.

[No paragraphs in this vol. of the Digest.]

## XIV. PATENT AGENTS.

[No paragraphs in this vol. of the Digest.]

## XV. MISCELLANEOUS CASES OF INFRINGEMENT.

### 1. Colourable Imitations, etc.

**11. Imitation—Get-up of Article—Expired Patent—Exclusive User.**—After a patent has expired or been revoked, the patentee is not entitled to say that his user during the life of the patent has so far associated his name with the goods that no one else can thereafter use the lately patented article without deceiving the public or gaining the reputation of the patentee. No length of exclusive user can entitle a man to a monopoly in the manufacture and sale of a useful combination not protected by a patent.

**W. EDGE & SONS, LD. v. W. NICCOLLS & SONS, LD.,** [1911] 1 Ch. 5; [1910] W. N. 250; 27 T. L. R. 103—C. A.

See S. C., TRADE MARKS, No. 14.

### (2) Exposure Without Intention of Sale.

[No paragraphs in this vol. of the Digest.]

### (3) Importation and Infringement by Foreigner.

[No paragraphs in this vol. of the Digest.]

### (4) Repairs Constituting new Article.

[No paragraphs in this vol. of the Digest.]

### (5) Other Cases.

**12. Purchase of Infringing Mechanism—Mechanism not Actually Used by Purchaser.**—The plaintiffs sued the defendants in respect of an alleged infringement of their patent granted for certain mechanism, which was adapted for use in connection with, and as part of, a complex machine, but could be detached without impairing the efficiency of the machine for other purposes. The defendants purchased two machines containing the alleged infringing mechanism, but they never used that particular mechanism, the essential parts of which had been actually detached from the rest of the machine while in the defendants' possession.

**HELD**—that in the circumstances there had been no infringement by the defendants of the plaintiffs' patent.

Decision of C. A. (25 T. L. R. 415; 26 R. P. C. 534) affirmed.

**BRITISH UNITED SHOE MANUFACTURING CO.,**  
[LD. v. SIMON COLLIER, LD., 26 T. L. R. 587;  
27 R. P. C. 567—H. L.]

## XVI. REVOCATION.

See also Nos. 10, 11, *supra*.

**13. Patented Article Manufactured Mainly or Exclusively Outside United Kingdom—Extensive Manufacture by Infringers in United Kingdom—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 27.**—On an application under sect. 27, subsect. 1, of the Patents and Designs Act, 1907, for the revocation of a patent on the ground that the patented article is manufactured exclusively or mainly outside the United Kingdom, the comptroller, in comparing the extent of the manufacture at home and abroad, is entitled to take into consideration the amount of manufacture by infringers in the United Kingdom. For the purposes of the sub-section it is quite immaterial whether the article manufactured in this country is or is not manufactured in derogation of the rights of the patentee under his patent.

**IN RE APPLICATION OF FIAT MOTORS, LD.,**  
[1911] 1 Ch. 66; 103 L. T. 453; 27 T. L. R. 74; 55 Sol. Jo. 64; 27 R. P. C. 762—Parker, J.

## PAUPERS.

See LUNATICS; POOR LAW; PRACTICE AND PROCEDURE.

## PAWNBROKERS AND PLEDGES.

See also SALE OF GOODS, No. 11.

**1. Mercantile Agent—Pledge of Jewellery—Rate of Interest—Factors Act, 1889 (52 & 53 Vict. c. 45), s. 2.**—It is not beyond the ordinary course of business of a mercantile agent in the jewellery trade to raise money by pledging goods to a pawnbroker. In considering whether a particular transaction is within the ordinary course of the mercantile agent's business, the actual disposition of the goods, and not the circumstances attending such disposition, is to be looked at. The surrounding circumstances, as for example a pledge at an unusual rate of interest, may, however, be evidence from which to infer that the pledgee had notice that the pledgor had no authority to make the pledge.

**JANESICH v. ATTENBOROUGH AND SON,** 102  
[L. T. 605; 26 T. L. R. 278—Hamilton, J.]

## PAYMENT INTO COURT.

See PRACTICE.

**PAYMENTS, APPROPRIATION OF.**

See BANKERS AND BANKING ; CONTRACTS ; MONEY ; MORTGAGES.

**PEDIGREE.**

See DIGNITIES ; EVIDENCE ; SALE OF LAND.

**PEDLARS.**

See MARKETS AND FAIRS.

**PEERAGES AND DIGNITIES.**

See SCOTTISH LAW, No. 2.

**PENALTY.**

See CRIMINAL LAW AND PROCEDURE ; DAMAGES.

**PENSION.**

See LOCAL GOVERNMENT, Nos. 20, 21 ; ROYAL FORCES, No. 1.

**PERJURY.**

See CRIMINAL LAW AND PROCEDURE.

**PERPETUATING TESTIMONY.**

See EVIDENCE.

**PERPETUITIES.**

I. ACCUMULATIONS . . . .	COL. 461
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**I. ACCUMULATIONS.**

See also REAL PROPERTY, No. 4.

1. Will—Accumulations of Income—Rents of Leaseholds—Provision for Liabilities under Leases—Validity of Trust—Thellusson Act (39 & 40 Geo. 3, c. 98), ss. 1, 2.]—H. G. H., who had two sets of leasehold property at D. and N., bequeathed them by her will to trustees upon

trust that they should yearly during the residue of the terms for which the property was held reserve one fourth part of the net rents and annual profits arising from the property ; and upon further trust to pay the remaining three fourth parts of the rents and profits to her four nieces and her nephew, and she directed that the one fourth part thereinbefore directed to be reserved should once or oftener every year be invested, and that all income arising from the investments should be added thereto by way of accumulation, and that the same and all accumulations thereof should be held as a reserve fund to indemnify the executors and trustees from all claims for dilapidations of the leaseholds which might arise ; and, subject to such indemnity and claims, upon trust for the equal benefit of her said four nieces and nephew in like manner as she had declared of the other three fourths of the rents and profits, and to the end that her said four nieces and nephew might have the benefit of an accumulated fund to meet the loss of income which would arise at the expiration of the leases of the property. The will also contained a residuary bequest. The testatrix died in 1879, and the period of twenty-one years from her death allowed by the Thellusson Act for accumulation terminated in 1900. The last of the leases expired in 1909. A sum of about £1,700 now represented the accumulations of the rents and profits of the leaseholds, after the payment of all claims for dilapidations. The question now arose to whom this fund belonged.

HELD—that the trust to accumulate was valid and not within the Thellusson Act, and that the nieces and nephew were entitled to this fund under the specific disposition in their favour in the will.

*Dictum* of Romilly, M.R., in *Varlo v. Faden* ((1859) 27 Beav. 265) followed.

IN RE HURLBATT, HURLBATT v. HURLBATT, [1910] 2 Ch. 553 ; 80 L. J. Ch. 29 ; 103 L. T. 585—Warrington, J.

**II. PERPETUITIES.**

See also RAILWAYS, No. 1 ; SETTLEMENTS, No. 16 ; WILLS, Nos. 39, 40.

2. Will—Settled Estate—Entry of Trustees during Minority of Tenant in Tail—Antecedent Unlimited Legal Estate of Trustees—Rule against Perpetuities.]—A testator provided by his will that, during the minority of any tenant for life or tenant in tail under his will who, but for the proviso, would have been entitled to the possession or the receipt of the rents of the C. estate, the trustees were to enter into the possession or the receipt of the rents and profits of the C. estate, and to apply them as by his will directed.

HELD—that the case was covered by the decisions in *Browne v. Stoughton* ((1846) 14 Sim. 369) and *Turrin v. Newcome* ((1856) 3 K. & J. 16), and that, since the legal estate vested in the trustees could not be destroyed by the tenants in tail exercising their right to disentail, it continued for an indefinite time and infringed the rule against perpetuities.

IN RE EARL OF STAMFORD AND WARRINGTON, [PAYNE v. GREY, [1910] W. N. 277 ; 55 Sol Jo. 154 ; 130 L. T. Jo. 150—Warrington, J.

**II. Perpetuities—Continued.**

**3. Rule Against "Double Possibilities"—Application of Rule to Equitable Interests.**—The rule against the limitation of land to an unborn child with remainder to the latter's unborn child applies alike to legal remainders and equitable interests.

The phrase "possibility upon a possibility" should not be used.

Decision of Eve, J. ([1909] 2 Ch. 450; 78 L. J. Ch. 657; 101 L. T. 153; 25 T. L. R. 688; 53 Sol. Jo. 651) affirmed.

**IN RE NASH, COOK v. FREDERICK**, [1910] 1 Ch. [1; 79 L. J. Ch. 1; 101 L. T. 837; 26 T. L. R. 57; 54 Sol. Jo. 48—C. A.]

**4. Settlement—Tenant for Life—Failure of Issue Male—Power of Selection in Default of Issue—Power Given to Tenant for Life, "his Heirs or Assigns"—Rule Against Perpetuities—Severable Power.**—Certain lands were, upon the marriage of the plaintiff (then Viscount Bernard), settled upon the plaintiff for life, with remainder to his first and every son successively in tail male, and "in default of such issue, as to such part of the said hereditaments and premises . . . as the said Viscount Bernard, his heirs or assigns, shall select, not exceeding the gross annual value of £5,000, to the use of the trustees or trustee and their heirs, upon trust to convey such part of the said hereditaments and premises as aforesaid to the said Viscount Bernard, his heirs and assigns, for ever, or as he or they shall direct, discharged from all incumbrances whatsoever." There was no issue of the marriage, and the plaintiff executed two deeds by which, in exercise of his power of selection, he purported to select and appoint certain lands of the prescribed value.

**HELD**—that the power of selection which was given to "Viscount Bernard, his heirs or assigns," was divisible, and, in the event which happened, was not void for remoteness.

*Miles v. Harford* ((1879) 12 Ch. D. 691) applied.

**EARL OF BANDON v. MORELAND**, [1910] 1 [I. R. 220—Barton, J., Ireland.]

**PERSONAL PROPERTY.**

*See* HUSBAND AND WIFE, IV., (3).

**PETITION OF RIGHT.**

*See* CROWN PRACTICE; PRACTICE.

**PETROLEUM.**

*See* EXPLOSIVES.

**PHYSICIANS.**

*See* MEDICINE AND PHARMACY.

**PIERS.**

*See* SHIPPING AND NAVIGATION; WATERS AND WATERCOURSES.

**PILOTS.**

*See* SHIPPING AND NAVIGATION.

**PISTOLS.**

*See* REVENUE; SALE OF GOODS.

**PLANS.**

*See* BUILDERS; EVIDENCE; METROPOLIS; PUBLIC HEALTH; SALE OF LAND.

**PLAY.**

*See* COPYRIGHT; THEATRES.

**PLEADING.**

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**I. MISCELLANEOUS.**

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**II. STRIKING OUT PLEADINGS.**

*See* CROWN PRACTICE, No. 1.

**III. RAISING POINTS OF LAW.**

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**IV. DEFAULT OF DEFENCE.**

*See* PRACTICE, No. 14.

**V. PARTICULARS.**

*See* LIBEL, No. 3.

**VI. SPECIAL PLEAS.**

*See* LANDLORD AND TENANT, No. 16.

**PLEDGE.**

See PAWNBROKERS AND PLEDGES.

**POACHING.**

See GAME.

**POISONS, SALE OF.**

See MEDICINE AND PHARMACY.

**POLICE.**

See CRIMINAL LAW ; LOCAL GOVERNMENT ; MAGISTRATES ; MASTER AND SERVANT, No. 110 ; METROPOLIS.

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**POOR LAW.**

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**II. MAINTENANCE.**

See also EDUCATION, No. 12.

(a) Recovery of Relief.

(i.) *From Pauper.*

1. *Expense of Maintenance in Infirmary—Basis of Calculation.*—The amount properly payable in respect of the maintenance of a pauper in an infirmary is the reasonable expenditure incurred by the guardians in respect of such maintenance for the time the pauper is an inmate of the infirmary. Such expenditure is to be calculated upon the basis that such pauper, with the other inmates during that period, should bear the cost of (a) maintenance, comprising provisions, necessaries, such as soap, coals, gas, water and the like, and clothing ; (b) salaries, rations, and uniforms of the officers of the infirmary ; (c) repairs, wages of carpenter, engineer, stokers, and temporary workmen, furniture, printing, insurance, and parochial rates on infirmary ; and (d) a charge in respect of the capital cost of the infirmary site and buildings.

ST. MARY, ISLINGTON (GUARDIANS) *v.* BIGGEN-  
[DEN, [1910] 1 K. B. 105 ; 79 L. J. K. B. 246 ;  
101 L. T. 677 ; 74 J. P. 17 ; 26 T. L. R. 44 ; 7  
L. G. R. 1159—Bray, J.]

(ii.) *From Persons Liable.*

2. *Running Away and Leaving Wife or Child Chargeable—Period within which Proceedings may be Taken—Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 19.*—The period of two years prescribed by sect. 19 of the Poor Law Amendment Act, 1876, as that within which proceedings may be taken against a person who runs away and leaves his wife or his or her child chargeable to any union, begins to run at the time when the offender absconds, and, therefore, such proceedings cannot be commenced after the expiration of two years from that date.

ASHLEY *v.* BLAKER, 101 L. T. 682 ; 73 J. P. 495 ;  
[8 L. G. R. 1—Div. Ct.]

(iii.) *In General.*

[No paragraphs in this vol. of the Digest.]

(b) Pauper Lunatics.

See also No. 6, *infra*.

3. *Expenses of Maintenance—Power of Justices to Fix Sum—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 283, 287.*—The powers of justices under sect. 287 of the Lunacy Act, 1890, to make an order for the expenses of maintenance of a pauper lunatic are not confined to the ministerial act of making an order for the payment of reasonable expenses to be ascertained *aliunde*, but the justices are entitled to fix the amount to be paid, and in fixing such sum they are not limited by the provisions of sect. 283 of the Act to a sum not exceeding 14s. weekly.

GLAMORGAN COUNTY ASYLUM (COMMITTEE OF VISITORS) *v.* CARDIFF GUARDIANS, [1910]  
2 K. B. 547 ; 79 L. J. K. B. 1146 ; 103 L. T. 189 ; 74 J. P. 402 ; 8 L. G. R. 860.

Affirmed on appeal, [1910] W. N. 258 ; 45 L. J. N. C. 789 ; 130 L. T. Jo. 105—C. A.]



## II. Maintenance—Continued.

4. *Expenses of Maintenance—Recovery from County Council—Set-off—Local Government Act, 1888* (51 & 52 Vict. c. 51), s. 24.]—Sums due from relations, &c., for maintenance of pauper lunatics during a particular financial year, but not recovered or received by the guardians until after the end of that year, must be taken into account when the guardians are seeking to recover the expenses of maintenance from the county council under the Local Government Act, 1888, s. 24 (2), (4).

GUARDIANS OF CALNE UNION *v.* WILTS [COUNTY COUNCIL, 74 J. P. N. C. 556—Hamilton, J.

### (c) Bastards.

[No paragraphs in this vol. of the Digest.]

## III. OVERSEERS.

[No paragraphs in this vol. of the Digest.]

## IV. SETTLEMENT AND REMOVAL.

### (a) Derivative Settlement.

[No paragraphs in this vol. of the Digest.]

### (b) Divided Parishes.

[No paragraphs in this vol. of the Digest.]

### (c) Husband and Wife.

5. *Wife Deserted by Husband—Separation Order under Summary Jurisdiction (Married Women) Act, 1895—“Deserted” Wife—Wife becoming Chargeable as Pauper Lunatic—Poor Removal Act, 1861* (24 & 25 Vict. c. 55), s. 3.]—A married woman who, on account of the misconduct of her husband, has been obliged to leave him, has in law been sent away by him, and is a “deserted” wife within the meaning of sect. 3 of the Poor Removal Act, 1861, so as to be able to acquire the *status* of irremovability by residence, apart from her husband, for the statutory period in a parish.

EASTBOURNE GUARDIANS *v.* CROYDON UNION, [1910] 2 K. B. 16; 79 L. J. K. B. 646; 102 L. T. 595; 26 T. L. R. 447; 8 L. G. R. 503—Div. Ct.

### (d) Settlement by Residence.

6. *Pauper Lunatic—Status of Irremovability—Appeal from Justices’ Order—Lunacy Act, 1890* (53 Vict. c. 5), ss. 289–303.]—Under sect. 303 of the Lunacy Act, 1890, an appeal to quarter sessions lies at the instance of the guardians of a union from an order of justices adjudicating that a pauper lunatic has acquired a *status* of irremovability in that union.

EASTBOURNE GUARDIANS *v.* CROYDON UNION, [1910] 2 K. B. 16; 79 L. J. K. B. 646; 102 L. T. 595; 74 J. P. 286; 26 T. L. R. 447; 8 L. G. R. 503—Div. Ct.

See S. C. under IV. (c), *supra*.

7. *Child under Sixteen with Deserted Mother—Acquisition of Settlement by Residence—Poor Removal Act, 1846* (9 & 10 Vict. c. 66), ss. 1, 3—*Poor Removal Act, 1848* (11 & 12 Vict. c. 111), s. 1—*Divided Parishes and Poor Law Amend-*

*ment Act, 1876* (39 & 40 Vict. c. 61), ss. 34, 35.]—Mabel P. was the lawful daughter of J. P. and Maria P., and was born in Newhaven on April 13th, 1886. J. P. resided with Maria P. until about the year 1888. In or about the year 1888 J. P. deserted Maria P., his wife, with whom he had been living at Newhaven, and he went to reside at Weymouth, where he remained until June, 1894. From the date of such desertion Maria P. continued to reside without interruption or relief in Newhaven with the pauper Mabel P. until about the year 1900. At the time of the desertion by J. P. the pauper Mabel P. was residing in Newhaven with her mother, Maria P., and Mabel P. continued there to reside without interruption or relief for the term of three years and upwards with Maria P. until about the year 1900. In or about the year 1900 the pauper Mabel P., who was then about fourteen years of age, left Newhaven and went to reside elsewhere at various places, but she had not since 1900 resided in any parish for a sufficient length of time to acquire a settlement. About the end of 1894 J. P. went to reside at Kingston-upon-Hull, and he has continued to reside within such area ever since. At the time that his daughter, the pauper Mabel P., attained the age of sixteen years—namely, on April 13th, 1902—J. P. was last legally settled in Kingston-upon-Hull, having resided for the term of three years.

HELD—(Darling, J., dissenting), that the settlement of Mabel P. was in the parish of Newhaven.

*West Ham Union v. Holbeach Union* ([1905] A. C. 450) and *Fulham Parish v. Woolwich Union* ([1907] A. C. 255) followed.

KINGSTON-UPON-HULL INCORPORATION FOR [THE POOR *v.* HACKNEY UNION [1910] W. N. 246; 103 L. T. 599—Div. Ct.

### (e) In General.

[No paragraphs in this vol. of the Digest.]

## V. VAGRANCY AND OTHER OFFENCES.

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## POOR PRISONERS’ DEFENCE ACT, 1903.

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See SHIPPING AND NAVIGATION.

## POST OFFICE.

See CRIMINAL LAW, No. 56.

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**POWER OF ATTORNEY.**

See AGENCY.

**POWER OF SALE.**

See BANKERS; MORTGAGES; SETTLEMENTS; TRUSTS; WILLS.

**POWERS.**

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See also DEATH DUTIES, Nos. 2, 9; EXECUTORS; HUSBAND AND WIFE; PERPETUITIES; SETTLEMENTS, VIII. (c) (iii.); WILLS, Nos. 14, 38, 48.

**POWER OF APPOINTMENT.****(a) Construction.**

[No paragraphs in this vol. of the Digest.]

**(b) Exercise.**

1. *Exercise of Power in Married Woman's Will Made During Coverture—Cessation of Coverture—Property Becoming Vested in Testatrix Absolutely—Intentions of Testatrix—Appointments Operating as Bequests—Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 24—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 3.*—A testatrix made her will in 1895, during the lifetime of her husband, and therein exercised a power of appointment given to her by her marriage settlement, dated 1861, in respect of the funds comprised in the settlement. In exercising the power she used the usual words "and of all other powers (if any) hereunto enabling me." By the death of her husband in 1905, without leaving any issue of the marriage, she became, by the terms of the settlement, absolutely entitled to the settled property. She died in 1908 a lunatic, without having revoked, altered, or republished her will.

HELD—that the appointments made by the will were clear intentions of the testatrix to dispose of the settled property; that the effect of sect. 3 of the Married Women's Property Act of 1893 was to make those appointments valid dispositions of the funds in question, notwithstanding the testatrix having subsequently become absolutely entitled; that the words

"all other powers hereunto enabling me" were applicable to the power given by the Act of 1893, and that the case was not affected by the testatrix becoming a lunatic.

IN RE JAMES, *HOLE v. BETHUNE*, [1910] 1 Ch [157; 79 L. J. Ch. 45; 101 L. T. 625—Joyce, J.

2. *Revocation—Appointment of Purchased Real Estate—Power of Revocation—Subsequent Appointment of Trust Fund—No Reference to Previous Appointment.*—If there is property to which words of appointment apply in their primary sense so that effect can be given to the deed in its ordinary signification, the appointment is confined to its primary meaning; and this is especially the case where the Court is asked to divest an estate already vested. Consequently, an appointment of trust moneys, stocks, funds and securities comprised in or subject to the trusts of a settlement will not operate as an appointment of real estate purchased out of the funds of the settlement so as to revoke by implication a previous appointment of such real estate, as to which a power of revocation and new appointment has been reserved.

Decision of Warrington, J., reversed.

IN RE THURSBY'S SETTLEMENT, *GRANT v. LITTLEDALE*, [1910] 2 Ch. 181; 79 L. J. Ch. 538; 102 L. T. 838; 54 Sol. Jo. 581—C. A.

3. *Power of Appointment of Specified Amount—General Devise and Bequest—Wills Act, 1837 (1 Vict. c. 26), s. 27.*—A testator, by his will, gave his residuary real and personal estate upon certain trusts in favour of his wife during her life, and empowered his wife by will to appoint that his trustees should, after her death, raise and set apart a sum sufficient to produce £2 10s. per week, and declared that she should have power to appoint such sum or the income thereof as she should think fit. The widow, by her will, devised and bequeathed her residuary real and personal estate upon trust for two of her children.

HELD—that by virtue of sect. 27 of the Wills Act, the residuary devise and bequest contained in the widow's will operated as an exercise of the power of appointment given to her by her husband's will.

IN re *Jones, Greene v. Gordon* ((1886) 34 Ch. D. 65) followed; IN re *Salvin, Marshall v. Wolseley* ([1906] 2 Ch. 459) distinguished.

IN re *WILKINSON, THOMAS v. WILKINSON*, [1910] 2 Ch. 216; 79 L. J. Ch. 600; 102 L. T. 854; 54 Sol. Jo. 563—Parker, J.

4. *General Power—Exercise by Will—Appointment of Executors and Bequest of Legacies—Estate of Donee Otherwise Insufficient to Pay Debts and Legacies—Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 27.*—When the estate of the donee of a general power of appointment by will is insufficient, apart from the fund to which the power applies, for the payment of her debts, the appointment by her will of executors and bequests of legacies operates as an exercise of her general power of appointment to such an extent as will enable her executor to pay, with the aid of her own pro-

**Power of Appointment—Continued.**

erty, her debts and the legacies given by the will.

IN RE SEABROOK, GRAY v. BADDELEY, [1910]  
[W. N. 244; 103 L. T. 587—Warrington, J.]

**5. Revocation—Exercise by Deed—Subsequent Inconsistent Devise—No Express Revocation.**—An existing appointment, executed by a deed containing a power of revocation, may be revoked by a devise in a will, even though there is no express revocation, where the devise is so inconsistent with the former execution that effect cannot be given to the devise if the former execution stands.

IN RE REILLY AND BRADY'S CONTRACT,  
[1910] 1 I. R. 258; 43 I. L. T. 117—  
Meredith, M.R., Ireland.

**(c) Release.**

**6. Settlement—Tenant for Life—Power to Apportion Further Portions—Disentailing Deed Subject to Anterior Estates and Powers Annexed Thereto—Mortgages—Covenants for Title Including Indemnity Against Portions—Subsequent Appointment of Portions—Priority of Portions over Mortgages.**—By a marriage settlement made in 1832 certain estates were limited to the use of A. for life, remainder to the use of trustees for a term of 600 years to secure £20,000 as portions for younger children, remainder to B., the eldest son of A., in tail male, with remainder over. The settlement contained a power for A. by deed and will to appoint a further sum of £10,000 as portions for younger children.

In 1854 B. executed a disentailing deed (in which A. joined as protector of the settlement) by which the estates were granted (subject to the several uses, estates, and charges created by the settlement anterior to the limitations in favour of B.'s estate tail, and to all powers and privileges to such precedent estates annexed) to such uses as A. and B. might jointly appoint. A. and B. in exercise of such power created mortgages on the estates, and entered into the usual covenants for title, with an indemnity (*inter alia*) against portions. A. by his will charged the estates with a further sum of £10,000 for portions, and died in 1896.

In 1909 questions arose as to the priorities of the mortgages created by the joint power, and the further portions appointed by A.'s will.

**HELD**—that A.'s covenants for title in the mortgages did not amount to a release by him of his power; and that in neither of the mortgages, either by way of grant or by way of covenant, had the tenant for life so acted towards the mortgagee as to release the power of appointing the portions, and therefore the three mortgages were postponed to the portions charge of £10,000 created by A.'s will.

*Scrope v. Offley* ((1736) 1 Bro. Parl. Cas. 276) distinguished.

Decision of Neville, J. ([1909] 2 Ch. 647; 79 L. J. Ch. 65; 101 L. T. 491) affirmed.

NOTTIDGE v. DERING. RABAN v. DERING,  
[1910] 1 Ch. 297; 79 L. J. Ch. 439; 102 L. T.  
145—C. A.

**7. Testamentary Power—Release Inter vivos—Release in Part—Agreement not to Exercise the Power—Validity and Effect of Release and Agreement.**—The donee of a testamentary power of appointment over settled funds among her children and issue agreed with two of her sons that she would not exercise the power so as to reduce the share of either to less than £7,000, and that the sum should vest in possession upon her decease, and with one of these sons that his share should be at least £7,000, and she agreed with a third son that she would so far release her power and so far contract not to exercise it that his share should be at least £7,000. By her will she appointed and settled £60,000 between her six sons and their issue, the sons being only tenants for life.

**HELD**—that the testatrix was bound to leave the fund unappointed to the extent necessary to leave each of her seven children £7,000 under the ultimate trust in default of appointment in favour of her children in equal shares, and that, as the fund unappointed by will was less than £49,000, the sums appointed must abate accordingly.

*Davies v. Huguenin* ((1863) 1 Hem. & M. 730) disapproved.

Decision of Neville, J. (54 Sol. Jo. 83) reversed.

IN RE EVERED, MOLINEUX v. EVERED, [1910]  
[2 Ch. 147; 79 L. J. Ch. 465; 102 L. T. 694;  
54 Sol. Jo. 540—C. A.]

**(d) Validity.**

**8. Rule Against Double Possibilities—Application of Rule to Equitable Interests.**—The rule against the limitation of land to an unborn child for life with remainder to the latter's unborn child applies alike to legal remainders and equitable interests.

Decision of Eve, J. ([1909] 2 Ch. 450; 78 L. J. Ch. 657; 101 L. T. 153; 25 T. L. R. 688; 53 Sol. Jo. 651) affirmed.

IN RE NASH, COOK v. FREDERICK, [1910] 1 Ch.  
[1; 79 L. J. Ch. 1; 101 L. T. 837; 26 T. L. R.  
57; 54 Sol. Jo. 48—C. A.]

**9. Void Condition—Severance of Condition and Appointment—Condition that Appointee Should Pay Off Debts of Appointor.**—A was the life tenant of a fund, with power to appoint a life interest in the whole or part of the income to any wife who might survive him. He exercised the power in part unconditionally, and in part by appointing (if he should die insolvent) an annuity, of which the greater part was to be used in paying off his debts.

**HELD**—that the appointment of the annuity could not be separated from the condition, and that the execution of the power was void as being for a purpose wholly foreign to the power.

IN RE COHEN, BROOKES v. COHEN, [1911] 1 Ch.  
[37; [1910] W. N. 216; 103 L. T. 626; 55  
Sol. Jo. 11—Joyce, J.]

Power of Appointment—Continued.  
(e) In General.

10. *Surrender of Life Interest in Securities—Hotchpot Clause—Valuation as at Date of Appointment or Date of Death of Life Tenant.*—Under a power of appointment contained in a marriage settlement securities were at different times appointed by the life tenant to persons objects of the power, and her interest in the securities was in each case surrendered by the same deed. The settlement contained a hotchpot clause. The life tenant died, leaving part of the funds unappointed.

HELD—that the securities must in each case be brought into account at their value as on the death of the life tenant, and not as on the date of appointment.

IN RE KELLY'S SETTLEMENT TRUSTS, GUSTARD [v. BERKELEY, [1910] 1 Ch. 78; 79 L. J. Ch. 60; 101 L. T. 555; 54 Sol. Jo. 12—Warrington, J.

11. *Fraud on Power—Appointments Void or Voidable—Purchaser for Value without Notice.*—An appointment under a common law power or a power operating only under the Statute of Uses by which the legal estate has passed is voidable only, and a purchaser for value with the legal estate and without notice is not affected by the fraudulent execution of the power; but an appointment under an equitable power, i.e., not operating so as to pass the legal estate or interest, is void, and a purchaser for value without notice, but without the legal title, can only rely on such equitable defences as are open to purchasers without the legal title who are subsequent in time against prior equitable titles.

*Phillips v. Phillips* ((1862) 5 L. T. 655) and *Carver v. Richards* ((1860) 1 De G. F. & J. 548) distinguished.

Decision of Neville, J. ([1910] W. N. 163; 79 L. J. Ch. 640; 103 L. T. 131) affirmed.

*CLOUTTE v. STOREY*, [1910] W. N. 250; 103 L. T. 617—C. A.

See also S. C., ESTOPPEL, No. 3.

12. *Rent-charge—Power of Appointment among Children or in default of Children—No Further Limitations—No Appointment—Resulting Use—Equitable Estate—Intention.*—Under a marriage settlement a perpetual rent-charge was conveyed by a wife to trustees on trust for the wife for life, and after her death for the children of the marriage in such proportions as she should appoint, or in default of children for the general appointees by her deed or will. There were no further limitations. The wife died leaving children but without appointing.

HELD—that there was a sufficient indication of intention to prevent the rent-charge resulting to the settlor's heir-at-law, and that all her children took equitable estates in fee simple.

IN RE STINSON'S ESTATE (No. 2), [1910] 1 [I. R. 47—Ross, J.

13. *Testamentary Appointment to Object on Attaining Twenty-one—Intermediate Interest.*—A., by will, gave the residue of his property to trustees in trust to invest same in Government

funds, and to pay the interest and dividends thereof to his son B. for life, and thereafter to apply the principal to his (B.'s) children as he might appoint by deed or will, and in default of appointment equally. B., by will, appointed that a sum of £5,000 should be paid to each of his younger sons and daughters on their attaining twenty-one, and the remainder to his eldest son. B. survived A., and died before any object of the power attained twenty-one. On B.'s eldest daughter attaining twenty-one :—

HELD—that she was entitled to the income of the £5,000 so appointed from the death of B.

IN RE LAMBERT. LAMBERT v. LAMBERT, [1910] 1 I. R. 280; 44 I. L. T. 199—C. A., Ireland.

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See also ADMIRALTY, No. 2; ARBITRATION; BANKRUPTCY, XIV.; COMPANIES, No. 49; CONTEMPT, No. 2; COUNTY COURTS; COURTS, No. 1; CROWN PRACTICE; DISCOVERY; EVIDENCE; EXECUTION; HIGHWAYS, No. 12; HUSBAND AND WIFE, XI. (12); INJUNCTIONS; INTERPLEADER; LIMITATION OF ACTIONS; LOCAL GOVERNMENT, No. 2; MORTGAGE, No. 2; PATENTS, XII.; PLEADINGS; RECEIVERS; SET-OFF AND COUNTER-CLAIM; SOLICITORS; SPECIFIC PERFORMANCE; TRUSTS, VIII.

## I. SERVICE OF WRIT OF SUMMONS.

[No paragraphs in this vol. of the Digest.]

## II. SERVICE OUT OF JURISDICTION.

### (a) Breach of Contract performable within Jurisdiction.

[No paragraphs in this vol. of the Digest.]

### (b) Injunction.

[No paragraphs in this vol. of the Digest.]

### (c) Miscellaneous.

1. *Arbitration—Notice of Motion to Set Aside Award—Service—Foreign Company out of Jurisdiction—R. S. C., Ord. 11, rr. 1, 8, 8A.*—Ord. 11, r. 8A, does not confer jurisdiction to give leave for a summons, order, or notice to be served out of the jurisdiction except under the circumstances in which there is jurisdiction to give leave for a writ of summons or notice of a writ of summons to be served out of the jurisdiction under Ord. 11, r. 1.

By a contract of sale executed in France and made between a Swedish company and a French company, the Swedish company, the sellers, elected a domicile in France. Under the terms of that contract all disputes were to be referred to arbitration, and, upon disputes having arisen, the French company appointed a Frenchman as their arbitrator, the Swedish company an Englishman, and the two arbitrators appointed

## II. Service out of Jurisdiction—Continued.

an Englishman as umpire, who made his award in England. Neither of the companies carried on business in England.

**HELD**—that leave could not be given under Ord. 11, r. 8A, to serve the French company in France with a notice of motion to set aside the award.

**IN RE AKTIEBOLAGET ROBERTSFORS AND LA [SOCIÉTÉ ANONYME DES PAPETERIES DE L'AA., [1910] 2 K. B. 727; 80 L. J. K. B. 13; 103 L. T. 503—Eve, J.**

### (d) Necessary or Proper Party.

[No paragraphs in this vol. of the Digest.]

## III. SUMMARY JUDGMENT ON SPECIALLY INDORSER WRIT.

*See also* MONEY AND MONEY-LENDERS, No. 14.

**2. Leave to Defend—Affidavit Verifying Cause of Action—Knowledge or Belief—R. S. C., Ord. 14, r. 1.]**—Where the affidavit in support of an application for judgment under Ord. 14 is not made by a person who can swear positively to the facts, but is merely an affidavit made on information and belief, there is no jurisdiction to make an order that the defendants should pay a certain sum into Court as a condition of having leave to defend.

**LAGOS v. GRUNWALDT AND ANOTHER, [1910] [1 K. B. 41; 79 L. J. K. B. 85; 101 L. T. 620; 26 T. L. R. 69; 54 Sol. Jo. 216—C. A.]**

**3. Liberty to Enter Judgment—Affidavit Verifying Cause of Action—"Other Person Who can Swear Positively to the Facts"—Solicitor of Plaintiff—R. S. C., Ord. 14, r. 1.]**—The plaintiff sued the defendants to recover principal and interest due under a bill of exchange payable on demand, and applied for judgment under Ord. 14. The affidavit in support of the application was made by a member of the firm of solicitors who acted for him, and who swore to the facts, but did not state the means of his knowledge, nor that he was authorised to make the affidavit by the plaintiff, and made it on information supplied him for that purpose.

**HELD**—that as the defendants admitted that he facts deposed to were true, the judge was right in accepting the affidavit as sufficient to support the summons.

*Per* Vaughan Williams, L.J.—Where the affidavit is sworn by a person other than the plaintiff he should state his means of knowledge and also the fact that he is authorised to make the affidavit.

**CHIRGWIN v. RUSSELL, 27 T. L. R. 21; 55 [Sol. Jo. 10, C. A.]**

**4. Recovery of Land—Tenancy at Will—R. S. C. (I.) (February 22, 1905), Ord. 3, r. 6 (F.).]**—A claim for possession of lands held under a tenancy at will can be specially indorsed under Ord. 3, r. 6.

*Kemp v. Lester* ([1896] 2 Ch. 162) applied.

**PILKINGTON v. POWER, [1910] 2 I. R. 194—[Div. Ct., Ireland.]**

**5. Weekly Tenancy—Determined by Notice to Quit—R. S. C., Ord. 3, r. 6; Ord. 14, r. 1.]**—Where a weekly tenancy is determined by notice to quit, the landlord is entitled to proceed for recovery of the premises by specially indorsed writ under Ord. 3, r. 6, and to recover judgment under Ord. 14, r. 1.

**M'GILLICUDDY v. CASSIDY, 44 I. L. T. 210.**

## IV. PARTIES.

*See also* CONTRACT, No. 3.

### (a) Attorney-General.

**6. Information—Relator—Appearance in Person—Staying Proceedings—Signature to Writ and Statement of Claim—Ord. IV., rr. 1, 2.]**—In an information at suit of the Attorney-General, he alone is recognised by the Court as plaintiff, and the relator must issue the writ and deliver the statement of claim by a solicitor, who (though in accordance with recognised practice he may be selected by the relator) is treated as solicitor for the Attorney-General. Accordingly, when the writ of summons was issued and signed and the statement of claim signed and delivered by the relator in person, the Court, on the application of the defendants, stayed the proceedings.

The writ and statement of claim in such a case being nullities, a defendant is not precluded from making such an application by having entered an unconditional appearance to the writ.

**ATTORNEY-GENERAL FOR IRELAND (HUMPHREYS) v. GOVERNORS OF ERASMUS SMITH'S SCHOOLS, [1910] 1 I. R. 325—C. A., Ireland.**

### (b) Compromise.

[No paragraphs in this vol. of the Digest.]

### (c) Joinder of Defendants.

*See also* Nos. 11, 38, *infra*.

**7. Contract for Carriage of Frozen Meat—Joinder of Owners of Unseaworthy Ship Employed under Contract—R. S. C., Ord. 16, r. 4.]**—The power to join several defendants under Ord. 16, r. 4, extends to cases where the subject matter of complaint is substantially the same against all the defendants, although the causes of action against them may be technically different and the respective grounds of liability are to some extent different.

The plaintiffs in their points of claim alleged that they contracted with H. Brothers for the carriage of frozen meat by certain named ships or by other suitable ships upon terms set out in the contract; that it was agreed that H. Brothers should provide the *D.*, a ship belonging to the F. company, to do service under the contract; and that owing to the *D.*'s unseaworthiness a consignment of meat was damaged. They claimed damages, severally or in the alternative, from H. Brothers under their contract, and from the F. company under the bills of lading signed by the master of the *D.*

**HELD**—that under Ord. 16, r. 4, the plaintiffs could join the F. company as defendants.

**Frankenburg v. Great Horseless Carriage Co.**

#### V. Parties—Continued.

([1900] 1 Q. B. 504) followed. *Smurthwaite v. Hanning* ([1894] A. C. 494) and *Sidler v. Great Western Ry. Co.* ([1896] A. C. 450) discussed.  
Decision of Hamilton, J. reversed.

COMPANIA SANSINENA DE CARNES CONGELADAS *v.* HOULDER BROTHERS & CO., LD., [1910] 2 K. B. 354; 79 L. J. K. B. 1094; 103 L. T. 333—C. A.

#### (d) Joinder of Plaintiffs.

See No. 8.

#### (e) Married Woman.

[No paragraphs in this vol. of the Digest.]

#### (f) Pauper.

See No. 25, *infra*.

#### (g) Representation.

8. "*Persons Having the Same Interest in One Cause or Matter*"—*Shippers of Goods on Vessel Sunk for Carrying Contraband*—*R. S. C., Ord. 16, r. 9.*—The plaintiffs were shippers of goods on board a vessel belonging to the defendants on a voyage from the United States to Japan during the Russo-Japanese War. On her voyage the vessel was sunk by a Russian cruiser on the ground that she was carrying contraband of war. The plaintiffs instituted an action against the defendants, the writs being issued "on behalf of themselves and others owners of cargo lately laden on board" the vessel, and the claim as indorsed on the writs was "For damages for breach of contract and duty in and about the carriage of goods by sea." The defendants took out a summons asking that the writs, or so much of the writs as related to parties other than the plaintiffs, be set aside on the ground that the provisions of Ord. 16, r. 9, were not applicable.

HELD (Buckley, L.J. dissenting)—that the plaintiffs, not being "persons having the same interest in one cause or matter," were not entitled to sue in a representative capacity, and that the writs ought therefore to be set aside.

*Per* Moulton, L.J.—A representative action does not lie to recover damages only.

Decision of Bucknill, J. reversed.

MARKT & CO., LD. *v.* KNIGHT STEAMSHIP CO., [LD.; SALE & FRAZAR, LD. *v.* KNIGHT STEAMSHIP CO., LD., [1910] 2 K. B. 1021; 79 L. J. K. B. 939; 103 L. T. 369—C. A.

#### (h) Substituting Plaintiff.

[No paragraphs in this vol. of the Digest.]

#### (i) Third Party Procedure.

[No paragraphs in this vol. of the Digest.]

#### V. JOINDER OF CAUSES OF ACTION.

[No paragraphs in this vol. of the Digest.]

#### VI. PAYMENT INTO COURT.

##### (a) Acceptance.

[No paragraphs in this vol. of the Digest.]

##### (b) Admitting Liability.

[No paragraphs in this vol. of the Digest.]

#### (c) Denying Liability.

[No paragraphs in this vol. of the Digest.]

#### (d) Generally.

[No paragraphs in this vol. of the Digest.]

#### (e) Libel Action.

See LIBEL AND SLANDER, No. 7.

#### (f) Trustees.

[No paragraphs in this vol. of the Digest.]

#### VII. PAYMENT OUT OF FUND IN COURT.

See also COMPULSORY PURCHASE, IV.; MORTGAGE, No. 6.

9. *Payment Out on Order of Court made on Incorrect Evidence*—"Default" of Paymaster-General—*Liability to Replace Fund*—*Court of Chancery (Funds) Act, 1872* (35 & 36 Vict. c. 44), s. 5.]—Where the Paymaster-General, in paying money out of Court, simply obeys the order of Court, he is not guilty of default within the meaning of sect. 5 of the Court of Chancery (Funds) Act, 1872, although it may subsequently appear that the order of Court upon which he acted was made on incorrect evidence. In such circumstances, therefore, a person who, but for such incorrect evidence, would have been entitled to receive a part of the fund, cannot claim to have the amount thereof replaced out of the Consolidated Fund.

IN RE WILLIAMS'S SETTLED ESTATE, [1910] 2 Ch. 481; 80 L. J. Ch. 8; 103 L. T. 390; 26 T. L. R. 688; 54 Sol. Jo. 736—Eady, J.

#### VIII. ACTION FOR DECLARATION.

See also No. 12, *infra*; CROWN PRACTICE, No. 1; LOCAL GOVERNMENT, No. 18.

10. *Licence to Assign Lease Unreasonably Withheld—Costs.*]—On an originating summons taken out by E. for a declaration that upon the true construction of a lease and in the events which had happened he, the lessee, was entitled to assign the residue of the term to his wife without the consent of the defendants, the lessors, and free from any conditions and for costs:—

HELD—that the condition imposed by the defendants on the granting of a licence to assign was unreasonable, and that the declaration should be made but without costs.

*Jenkins v. Price* ([1907] 2 Ch. 229—Eady, J.) followed.

EVANS *v.* LEVY, [1910] 1 Ch. 452; 79 L. J. Ch. 383; 102 L. T. 123—Eve, J.

#### IX. DISCONTINUANCE.

See SET-OFF AND COUNTERCLAIM, No. 2.

#### X. TRIAL.

##### (a) Miscellaneous.

11. *Two Defendants Separately Represented—Order of Speeches of Counsel.*]—The plaintiff claimed damages for personal injuries against two sets of defendants who were separately represented. At the conclusion of the plaintiff's

**X. Trial—Continued.**

case counsel for the first defendants on the record opened the case and then called evidence on their behalf. Counsel for the second defendants then opened the case and called evidence on their behalf.

**HELD**—that counsel for the first defendants should sum up their case to the jury before counsel for the second defendants summed up the case on their behalf.

**MEDLEY v. LONDON UNITED TRAMWAYS, LD.,**  
[AND LONDON GENERAL OMNIBUS CO., LD.,  
26 T. L. R. 315—Pickford, J.]

**(b) Notice of Trial.**

[No paragraphs in this vol. of the Digest.]

**(c) Place of Trial.**

[No paragraphs in this vol. of the Digest.]

**(d) Right to Jury.**

See also COUNTY COURTS, Nos. 1, 5.

**12. Legitimacy Declaration Suit—Matrimonial Causes Act, 1857** (20 & 21 Vict. c. 85), ss. 28, 36—*Legitimacy Declaration Act, 1858* (21 & 22 Vict. c. 93), s. 4.—The operation of sect. 28 of the Matrimonial Causes Act, 1857, is confined to issues relating to allegations of adultery in divorce proceedings, and has no application to proceedings under the Legitimacy Declaration Act, 1858. In proceedings under the latter Act the Court has a discretion as to allowing the issues to be tried before a jury.

Circumstances in which, on the ground of inconvenience, delay, and the possible miscarriage of justice, the Court refused to direct the trial by a jury of the issues raised by a petition under the Legitimacy Declaration Act, 1858.

**SACKVILLE - WEST v. ATTORNEY - GENERAL**  
[(LORD SACKVILLE AND OTHERS CITED),  
[1910] P. 143; 79 L. J. P. 34; 26 T. L. R. 33  
—Bigham, Pres.]

**XI. MOTION FOR NEW TRIAL.****(a) Costs.**

[No paragraphs in this vol. of the Digest.]

**(b) Grounds for Ordering New Trial.**

See JURIES, No. 1; MASTER AND SERVANT,  
No. 133.

**(c) Time for Serving Notice.**

[No paragraphs in this vol. of the Digest.]

**XII. JUDGMENT.**

See also XXIII. (h), *infra*; COMPANIES,  
No. 12.

**13. Drawing up Judgments — Insertion of Correspondence in Judgment Orders—Unread Letters in Bundle Supplied to Judge.**—Motion that a bundle of admitted correspondence, handed to the judge, should be scheduled as read to the judgment order, refused on the ground of recent instructions from the Court of Appeal that only such documents as had been specifically referred to at the trial should be so scheduled.

Y.D.

*Law v. Law* ([1904] W. N. 152) on the same ground overruled.

**MAINWARING v. LORD CLARINA**, [1910] W. N. 14; 45 L. J. N. C. 21; 128 L. T. Jo. 196—Neville, J.

Affirmed on appeal (see [1910] W. N. 178)—C. A.

**14. Motion for Judgment—Default of Defence—Infant Defendant—R. S. C., Ord. 19, r. 13; Ord. 27, r. 11; Ord. 32, r. 6.**—An order for judgment in default of defence can be made against an infant upon motion.

**CHEEK v. CHEEK**, [1910] W. N. 87; 45 L. J. N. C. 222; 128 L. T. Jo. 476—Neville, J.

**15. Damages—Joint Tort-feasors — Libel—Apportionment by Jury.**—In an action for libel against a newspaper and the writer of the matter complained of, the jury gave a verdict for the plaintiff for £500 and apportioned the damages as being £495 against the newspaper and £5 against the writer.

**HELD**—that as damages could not be apportioned against joint tort-feasors, judgment must be entered for the full amount against both defendants.

**DAMIENS v. MODERN SOCIETY, LD.**, *Times*, [December 22nd, 1910—Grantham, J.]

**XIII. EXECUTION.**

See also Nos. 17, 18, *infra*; EXECUTION.

**(a) Discovery in Aid.**

[No paragraphs in this vol. of the Digest.]

**(b) Scottish Judgment.**

See BANKRUPTCY, No. 29.

**(c) Sequestration.**

**16. Corporation—Wilful Disobedience to Order of Court—R. S. C., Ord. 42, r. 31.**—A corporation is subject to process for contempt under Ord. 42, r. 31, for wilful disobedience if it in fact does that which it is restrained by injunction from doing, although in doing it there is no direct intention of disobeying the order, so that the disobedience is not contumacious in itself.

The word "wilful," which qualifies "disobedience" in r. 31, excludes only casual, accidental, or unintentional acts.

*Attorney-General v. Walthamstow Urban District Council* ((1895) 11 T. L. R. 533) followed.

**STANCOMB v. TROWBRIDGE URBAN DISTRICT COUNCIL**, [1910] 2 Ch. 190; 79 L. J. Ch. 519; 102 L. T. 647; 74 J. P. 210; 26 T. L. R. 407; 54 Sol. Jo. 458; 8 L. G. R. 631—War-  
rington, J.]

See S. C. under CORPORATIONS.

**(d) Stay.**

[No paragraphs in this vol. of the Digest.]

**(e) Writ of Possession.**

[No paragraphs in this vol. of the Digest.]

**(f) In General.**

[No paragraphs in this vol. of the Digest.]



## XIV. ATTACHMENT OF DEBTS.

See also BANKRUPTCY, No. 29.

17. *Garnishee Order nisi—Army Pension—Paymaster-General's Pay Warrant—Negotiability—Army Act, 1881 (44 & 45 Vict. c. 58), s. 141.*—The defendant, a retired army officer, entitled to a pension, employed his bank to collect and place the pension to an account which he kept exclusively for such moneys. On January 1st, 1909, there was a sum standing to the credit of this account of £6 13s. 8d.—the balance remaining of previous pension moneys. On that day a garnishee order *nisi* was served on his bankers by the plaintiffs. On the same date the defendant received the usual form of receipt to be signed by him for the amount of his pension then due. This was signed by the defendant and handed to his bankers, who credited him with the amount on the same date, although the money was not actually received till January 7th.

HELD—(1) that the sum of £6 13s. 8d. had lost its character as pension and was attached by the garnishee order; (2) that the form signed by the defendant and presented through his bankers to the Paymaster-General was a mere receipt and was not negotiable; and (3) that the garnishee order did not attach the £17 12s. 6d., inasmuch as it had not come into the possession of the defendant till after the date of the garnishee order.

JONES & Co. v. COVENTRY, [1909] 2 K. B. 1029; [79 L. J. K. B. 41; 101 L. T. 281; 25 T. L. R. 736; 53 Sol. Jo. 734—Div. Ct.]

18. *Garnishee Order nisi—Order Inaccurate—Right of Bank to Refuse to Act on Order.*—Unless a garnishee order *nisi* correctly designates the judgment debtor and the account which he has with a bank, the bank on which the order is served need not retain the money of the customer which the order is intended to attach.

Decision of Lawrence, J., reversed.

KOCH v. MINERAL ORE SYNDICATE, LONDON [AND SOUTH WESTERN BANK, LD., GARNISHEES, 54 Sol. Jo. 600—C. A.]

## XV. CHARGING ORDERS.

[No paragraphs in this vol. of the Digest.]

## XVI. EQUITABLE EXECUTION.

[No paragraphs in this vol. of the Digest.]

## XVII. ACTIONS BY AND AGAINST FIRMS.

[No paragraphs in this vol. of the Digest.]

## XVIII. TRANSFER AND CONSOLIDATION OF ACTIONS.

19. *Transfer to County Court—Equitable Action—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 69.*—The Court will not order the transfer of a Chancery action to the county court, where the hearing must take a considerable time and might prevent other litigants from getting a speedy determination of their causes.

READING CORPORATION v. FEWSTER, 55 Sol. [Jo. 125—Eve, J.]

## XIX. MOTIONS.

See No. 14, *supra*.

## XX. ORIGINATING SUMMONS.

See also SALE OF LAND, No. 8.

20. *Void Trusts—Cestui que Trust under Resulting Trust—Contributor to Trade Union Funds claiming Account and Inquiry—R. S. C., Ord. 54A, r. 1; Order 55, r. 3.*—Proceedings by way of originating summons are not available, either under Ord. 55, r. 3, or under Ord. 54A, r. 1, to persons claiming as the *cestuis que trust* under a resulting trust arising on failure of the trusts of an instrument on account of illegality. For their claim is not under the instrument which declared the trusts which have failed, nor are they seeking to have that instrument construed. Therefore, even assuming that the rules of a trade union constitute such an instrument as is referred to in the above rules, yet the subscribers to a fund devoted by the rules of a trade union to an illegal object cannot obtain a declaration of their right to be repaid their subscriptions upon an originating summons, but must resort to an action commenced by writ to obtain the relief (if any) to which they are entitled.

IN RE AMALGAMATED SOCIETY OF RAILWAY SERVANTS (PARLIAMENTARY FUND TRUSTS), ADDISON v. PILCHER, [1910] 2 Ch. 547; 80 L. J. Ch. 19; 103 L. T. 627; 27 T. L. R. 12; 54 Sol. Jo. 874—Eady, J.]

## XXI. CHAMBERS IN CHANCERY DIVISION.

See No. 20, *supra*.

## XXII. APPEALS.

(a) Appeals to Court of Appeal.

See also XXIII. (a), *infra*.

21. *"Matter of Practice and Procedure"—Arising out of an Action—Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 1 (4).*—On an application by a plaintiff that the defendant's appearance and all subsequent proceedings should be struck out on the ground that the defendant was not of sound mind when the appearance was entered, and that the defendant's solicitors should be ordered to pay the plaintiff's costs incurred since the appearance, the Master ordered the appearance and subsequent proceedings to be struck out, but made no order as to the payment of the plaintiff's costs by the defendant's solicitors. The plaintiff appealed against the Master's refusal to order payment of the plaintiff's costs by the defendant's solicitors. The judge at chambers affirmed the Master's decision. In the Court of Appeal, on a preliminary objection:—

HELD—that the appeal was as to a matter of practice and procedure in connection with an action and therefore within the provisions of sect. 1 (4) of the Judicature Act, 1894, and lay to the Court of Appeal and not to the Divisional Court.

**XXII. Appeals—Continued.**

*In re Marchant* ([1908] 1 K. B. 998) distinguished.

*YONGE v. TOYNBEE*, [1910] 1 K. B. 215; 79 [L. J. K. B. 208; 102 L. T. 57—C. A.

S. C. under AGENCY, No. 5.

**(b) Appeals to House of Lords.**

*See also* XXIII. (a), *infra*.

**22. Decision upon Hypothetical State of Facts—Waiver of Clause in Contract.**—The House of Lords will not give a decision upon a hypothetical state of facts, which does not represent the real contract between the parties.

Therefore where shipowners sued the charterers for demurrage under a charter-party which contained a cesser clause which would have been a complete answer to the action, and the defendants, by agreement between the solicitors of the parties, undertook not to rely upon this clause, the House of Lords declined to make any other order than that the action be dismissed, no costs being allowed to either party.

*GLASGOW NAVIGATION CO. v. IRON ORE CO.*, [1910] W. N. 84; 79 L. J. P. C. 83; 102 L. T. 435; 11 Asp. M. C. 387; 47 Sc. L. R. 507—H. L. (Sc.).

**(c) Arbitration Appeals.**

[No paragraphs in this vol. of the Digest.]

**(d) Divisional Court.**

*See* COUNTY COURTS, No. 8.

**(e) Final and Interlocutory Orders.**

**23. Order Dismissing Action as Frivolous—Interlocutory or Final Order.**—*R. S. C., Ord. 25, r. 4; Ord. 58, r. 15.*—An order dismissing an action as frivolous or vexatious, whether made under the inherent jurisdiction of the Court or under r. 4 of Order 25, is an interlocutory order for the purposes of appeal.

*IN RE PAGE, HILL v. FLADGATE*, [1910] 1 Ch. 489; 79 L. J. Ch. 482; 102 L. T. 388; 54 Sol. Jo. 305—C. A.

**(f) Miscellaneous.**

**24. Order by Vacation Judge—Motion to Discharge Attachment Order.**—*R. S. C., Ord. 63, r. 12.*—A Court of first instance cannot discharge an order made by a vacation judge; but it will in certain circumstances direct that no proceedings be taken under the order except with the sanction of that judge or of the Court of Appeal.

Decision of Joyce, J. (101 L. T. 516) affirmed.

*HIPKISS v. FELLOWS*, 101 L. T. 701—C. A.

**(g) Official Referee.**

[No paragraphs in this vol. of the Digest.]

**(h) Security for Costs.**

*See also* COUNTY COURTS, No. 8.

**25. Appellant Ordered to Give Security—Subsequent Leave to Appeal In Formâ Pauperis—**

*R. S. C., Ord. 16, r. 22.*—When an appeal to the Court of Appeal has been set down, and the respondent to that appeal obtains an order that the appellant should give security for costs within a certain time, the granting of that order by the Court does not preclude the appellant from applying, within the time allowed, for leave to appeal *in formâ pauperis*, and if his application is granted, the order for security ceases to be operative.

General observations on applications for security for costs and for leave to appeal *in formâ pauperis*.

*WILLÉ v. ST. JOHN*, [1910] 1 Ch. 701; 79 L. J. [Ch. 409; 102 L. T. 617; 26 T. L. R. 405; 54 Sol. Jo. 457—C. A.

**(i) Time for Appeal.**

[No paragraphs in this vol. of the Digest.]

**XXIII. COSTS.**

*See also* AGENCY, No. 5; BANKRUPTCY, Nos. 18, 19, 20; COMPANIES, No. 68; COMPULSORY PURCHASE, No. 4; COUNTY COURTS, No. 2; INFANTS, No. 2; INTOXICATING LIQUORS, Nos. 9, 10; MASTER AND SERVANT, I., 1 (1), (2); PARTITION, No. 1; REVENUE, No. 8; SOLICITORS, V.

**(a) Appeal.**

*See also* No. 25, *supra*; No. 34, *infra*.

**26. Leave to Appeal from County Court on Terms that no Costs of the Appeal should be asked for—Appeal to Court of Appeal Allowed with Costs—Taxation of Costs in Court of Appeal—Such Costs Allowed only as were Necessarily Incurred after the Appeal was Decided in Divisional Court.**—Leave to appeal to the Divisional Court was given to plaintiffs on the condition that, whatever the result of the appeal was, they would not ask for costs. The appeal was heard and dismissed. The Court of Appeal allowed the appeal from the decision of the Divisional Court with costs in all Courts except so far as the appellants might be prevented from claiming costs as a term of obtaining leave to appeal. On taxation the Master disallowed the costs of all documents necessary for the appeal to the Divisional Court, which were requisite, nevertheless, for appeal to the Court of Appeal, but allowed the costs of such additional copies as were required for appeal in the Court of Appeal. The plaintiffs appealed, submitting that as there had been no taxation of the costs in question incurred in the Divisional Court, the fact that the documents were used there did not preclude their getting costs in respect of them under the order of the Court of Appeal referred to above.

**HELD**—that the decision of the taxing Master was right.

Decision of Lawrence, J., affirmed.

*MASSON TEMPLIER & CO. v. DE FRIES, DE [FRIES, CLAIMANT (No. 2), [1910] 1 K. B. 535; 79 L. J. K. B. 392; 102 L. T. 155; 54 Sol. Jo. 304—C. A.*

**27. Appeal as to Costs—Cross-Appeal—Order Dismissing both Appeal and Cross-Appeal with**

## XXIII. Costs—Continued.

*Costs directing Set-off of Costs—Construction of Order—Principle of Taxation—Apportionment of Costs.*—In an action brought by the plaintiff against the defendants the judge at the trial gave judgment for the defendants dismissing the action with no costs on either side, he being of opinion that both sides were to blame. The defendants appealed from so much of the judgment as directed that they should have no costs, and the plaintiff gave a cross-notice of appeal asking that judgment should be entered for him with costs. The Court of Appeal dismissed both appeal and cross-appeal with costs, and directed that the defendants' costs of the appeal and the plaintiff's costs of the cross-notice be set off one against the other. The taxing Master taxed on the principle that the plaintiff got all his costs of the appeal, except so far as they were increased by his cross-notice of appeal, and disallowed the defendants' costs of appeal, except so far as they were increased by the plaintiffs' cross-notice of appeal. The taxing Master accordingly in taxing the plaintiff's bill of costs of the defendants' appeal allowed items for briefs and fees paid to counsel and their clerks, and in taxing the defendants' bill of costs of the plaintiff's cross-appeal disallowed the corresponding items in that bill.

HELD—that on the true construction of the order made by the Court of Appeal there should be an apportionment in respect of these items between the appeal and the cross-appeal.

*Saner v. Bilton* ((1879) 11 Ch. D. 416) considered.

Decision of Hamilton, J., affirmed.

*JONES v. STOTT*, [1910] 1 K. B. 893; 79 L. J. [K. B. 766; 102 L. T. 670; 54 Sol. Jo. 424—C. A.]

**28. Appeal to House of Lords—Taxation—Costs of More than Two Counsel—No Exception in Favour of Crown.**—In party and party taxation in the House of Lords the Crown is not entitled to recover the fees of more than two counsel.

PRACTICE NOTE, [1910] W. N. 120—Appeal [Committee.]

## (b) Apportionment.

[No paragraphs in this vol. of the Digest.]

## (c) Discretion of Judge.

**29. Party Recovering One Farthing Damages.**—The plaintiffs sued the defendants for libel and obtained a verdict for one farthing damages.

HELD—that the conclusion to be drawn from the verdict was that the jury thought either that the libellous charges were nearly true, or that the plaintiffs had suffered no commercial damage, and that in those circumstances each party should bear their own costs.

*RED MAN'S SYNDICATE, LD. v. ASSOCIATED [NEWSPAPERS, LD.]*, 26 T. L. R. 394—Phillimore, J.

## (d) Documents.

**30. Taxation—Copies of Documents for Use of Court.**—The Court ought to be supplied with copies of all documents required for its use; and the costs thereof are properly allowed on taxation.

Decision of Channell, J., reversed.

*WALKER v. PROVINCIAL HOMES INVESTMENT [Co., LD.]*, 101 L. T. 871—C. A.

## (e) Independent Proceedings.

**31. Taxation—Instructions for Brief—Two Actions relating to same Subject-Matter—Same Solicitor acting for Plaintiffs in both Actions.**—Because a plaintiff is successful in his action he ought not to be deprived of some part of his proper costs thereof by reason of the fact that another plaintiff who was employing the same solicitor had another action pending which related to the same subject-matter; and *a fortiori* when that other action was dismissed with costs.

Decision of Channell, J., reversed.

*WALKER v. PROVINCIAL HOMES INVESTMENT [Co., LD.]*, 101 L. T. 871—C. A.

## (f) Miscellaneous.

**32. Negligence on Part of Defendants—No Damage Suffered by Plaintiff.**—In an action claiming damages for the negligent preparation of a catalogue the jury found that the defendants had been negligent, but that the plaintiffs had suffered no damage in consequence thereof.

HELD—that the plaintiffs were not, and the defendants were, entitled to the costs of the action.

*COLE AND OTHERS v. CHRISTIE, MANSON, AND [WOODS]*, 26 T. L. R. 469—Lawtance, J.

## (g) Security for Costs.

See also No. 25, *supra*; COUNTY COURTS. No. 8.

**33. Insolvent Executor as Plaintiff—Solvent Estate.**—When a plaintiff brings an action as executor he will not be required, even though he be insolvent, to give security for the defendant's costs if the estate of which he is executor is solvent.

*HENRY v. BIGGER*, 44 L. T. 47—Gibson, J., [Ireland.]

## (h) Taxation generally.

See also COUNTY COURTS, No. 2.

**34. Quantum—Discretion of Judge to Vary Amount allowed by Taxing Master.**—On a mere question of *quantum* the decision of the taxing Master will not be reviewed by the Court except under very exceptional circumstances.

*IN THE ESTATE OF OGILVIE, OGILVIE v. [MASSIE]*, [1910] P. 243; 103 L. T. 154—C. A.

## XXIII. Costs—Continued.

**35. Fees to Counsel—Motion heard with Witnesses and Treated as Trial—Fresh Briefs.**—As between the parties to an action, a party is not entitled to deliver a fresh brief to counsel as on a fresh proceeding when a motion is ordered to be set down with witnesses, the hearing to be treated as the trial. When this course is taken the taxing Master may allow higher fees to counsel on the motion.

*Dyer v. London School Board* ([1903] W. N. 82) distinguished.

*COOKSON v. CATTON*, [1910] 1 Ch. 410; 79 [L. J. Ch. 265; 102 L. T. 159; 54 Sol. Jo. 307—Warrington, J.

**36. Three Counsel—Co-Defendants—Expert Evidence—Costs of Uncalled Witnesses—R. S. C. Ord. 65, r. 27 (29).**—The costs of three counsel for one of two co-defendants will be allowed on a party and party taxation in a case where there are special complications, even though the interests of the co-defendants, each separately represented, are identical and they act in combination in defending the action.

The costs of expert witnesses will be allowed in a proper case even though they are not called at the trial.

*GREAT WESTERN RY. CO. v. CARPALLA UNITED [CHINA CLAY CO. (No. 2)]*, [1909] 2 Ch. 471; 79 L. J. Ch. 55; 101 L. T. 383; 53 Sol. Jo. 699—Eve, J.

**37. Claim and Counterclaim—Both Dismissed with Costs—Form of Judgment.**—Where in an action both claim and counterclaim are dismissed with costs, the judgment in proper form ought to direct the defendant's costs of the action to be taxed, and to order the plaintiff to pay them, and to direct the plaintiff's costs of the counterclaim to be taxed and to order the defendants to pay them, with a set-off.

*JAMES v. JACKSON*, [1910] 2 Ch. 92; 79 L. J. Ch. 418; 102 L. T. 804—Warrington, J.

## (i) Trustees and Executors.

[No paragraphs in this vol. of the Digest.]

## (k) Two Defendants.

**38. Plaintiff Successful against One Defendant—Costs Payable to Successful Defendant Recoverable from Unsuccessful Defendant.**—Where, in an action for damages for personal injuries brought against two sets of defendants, separately represented, the jury returned a verdict against the second defendants and in favour of the first defendants, and judgment was given accordingly, the judge ordered that the plaintiff's costs recoverable against the unsuccessful defendants should include the costs he might have to pay to the successful defendants.

*MEDLEY v. LONDON UNITED TRAMWAYS, LD. [AND LONDON GENERAL OMNIBUS CO., LD.]*, 26 T. L. R. 315—Pickford, J.

## XXIV. STAY OF PROCEEDINGS.

See also SHIPPING, No. 27.

## (a) Actions in Different Courts.

[No paragraphs in this vol. of the Digest.]

## (b) Frivolous and Vexatious Actions.

See CROWN PRACTICE, No. 1.

## (c) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

## XXV. MISCELLANEOUS.

**39. Annulment of Former Rules—R. S. C. Ord. 72, r. 2; Appendix O.**—Ord. 72, r. 2, has not the effect of preserving a practice which existed under any of the rules in Appendix O of the Rules of the Supreme Court, 1883, which are annulled by the introductory rule.

*THE "CRAIGHALL,"* [1910] P. 207; 103 L. T. 236—C. A.

**40. Jurisdiction—Order made in Chancery Division—Solicitor—Non-Delivery of Bill of Costs—Motion for Attachment—Costs of Motion—Recovery in King's Bench Division—R. S. C. Ord. 42, r. 24.**—An action is maintainable in the King's Bench Division to enforce an order made in the Chancery Division that the defendant, a solicitor and the plaintiff's London agent, should pay to the plaintiff the costs of a motion for attachment for contempt of Court in not delivering a bill of costs previously ordered by the Court to be delivered.

*SELDON v. WILDE*, [1910] 2 K. B. 9; 79 L. J. [K. B. 621—Darling, J.

Affirmed on appeal, 130 L. T. Jo. 200—C. A.

## PRESCRIPTION.

See EASEMENTS; HIGHWAYS; MINES AND MINERALS; REAL PROPERTY AND CHATTELS REAL; WATERS AND WATERCOURSES.

## PRESS AND PRINTING.

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## PRESUMPTION AS TO DOCUMENTS AND FACTS.

See EVIDENCE; SALE OF LAND.

## PREVENTION OF CRIME.

See CRIMINAL LAW AND PROCEDURE.



## PREVENTION OF CRUELTY PRIVILEGE. TO CHILDREN.

*See* CRIMINAL LAW AND PROCEDURE.

## PRINCIPAL AND AGENT.

*See* AGENCY.

## PRINCIPALS AND ACCESSORIES.

*See* CRIMINAL LAW AND PROCEDURE.

## PRINCIPAL AND SURETY.

*See* BANKRUPTCY AND INSOLVENCY;  
BILLS OF EXCHANGE; GUARANTEE.

## PRISONS AND REFORMATORIES.

1. *Refusal of Prisoner to take Food—Forcible Feeding — Assault — Summons against Home Secretary — Prison Act, 1877* (40 & 41 Vict. c. 21). s. 5. —On a motion for a rule *nisi* for a *mandamus* to a magistrate to issue summonses against the Home Secretary and the governor and the medical officer of a gaol for an assault alleged to have been committed by the medical officer on one of the prisoners who had refused to eat, and who had consequently been fed by force :—

HELD—that the fact that the prisons are vested in the Home Secretary by sect. 5 of the Prison Act, 1877, did not render him liable to be summoned in respect of the alleged assault.

R. v. BROWN, *EX PARTE* AINSWORTH, 74 J. P. [53—Div. Ct.

## PRIVATE BILLS.

*See* RAILWAYS, No. 2; TRAMWAYS, No. 4.

## PRIVATE STREET WORKS.

*See* HIGHWAYS; METROPOLIS.

## PRIVATE WAYS.

*See* EASEMENTS.

*See* DISCOVERY; EVIDENCE; LIBEL AND SLANDER.

## PRIVY COUNCIL.

*See* COURTS; DEPENDENCIES AND COLONIES.

## PRIZE FIGHTING.

*See* CRIMINAL LAW AND PROCEDURE.

## PROBATE DUTY.

*See* DEATH DUTIES.

## PROBATE OF WILLS.

*See* EXECUTORS AND ADMINISTRATORS.

## PROBATION OF OFFENDERS.

*See* CRIMINAL LAW, Nos. 17, 18.

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*See* PRACTICE AND PROCEDURE.

## PROFITS À PRENDRE.

*See* EASEMENTS AND PROFITS À PRENDRE.

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*See also* LOCAL GOVERNMENT; METROPOLIS; PUBLIC HEALTH.**I. THE PUBLIC AUTHORITIES PROTECTION ACT, 1893.**

- (a) Application of Act.  
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- (c) Limitation of Actions.

1. *Nuisance—Injunction—Ventilating Shaft—Date of Ceasing of Nuisance—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (a).*—In an action for an injunction to restrain an alleged nuisance by a borough council, the plaintiff failed to prove that he had commenced his action within six months of the nuisance having come to an end.

**HELD**—that under the provisions of the Public Authorities Protection Act, 1893, the action failed and must be dismissed, with costs as between solicitor and client.

**BARNETT v. WOOLWICH BOROUGH COUNCIL,**  
[74 J. P. 441—Warrington, J.]

**II. ACTS OF STATE.**

[No paragraphs in this vol. of the Digest.]

**III. PUBLIC OFFICERS.**

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*See also* ANIMALS; CORPORATIONS, No. 1; FACTORIES; FOOD AND DRUGS; HIGHWAYS, No. 7; INJUNCTIONS, No. 3; LOCAL GOVERNMENT; METROPOLIS; NUISANCE; PUBLIC AUTHORITIES, No. 1; SEWERS; STREET TRAFFIC; WATERS, No. 2.

**I. HOUSING.**

- (a) Common Lodging House.  
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1. *Demolition of Houses—Presentment of Grand Jury—"Court"—Mandamus—Closing Order—Injunction.*—In 1904 the defendant corporation, acting under special statutory powers, served a notice on the plaintiff, as owner, with respect to

### I. Housing—Continued.

a certain court and to one of the two rows of six houses comprised in it, to the effect that a medical officer's report upon the premises would be laid before the grand jury with a view to their demolition as being unfit for human habitation. The grand jury made two presentments, one with reference to the court and the other with reference to the row of six houses on one side of it. These houses were eventually demolished and £375 compensation was paid in respect of them to the plaintiff. In 1909 a notice was served on the plaintiff requiring the other row of six houses in the court to be made fit for human habitation. The plaintiff did not comply with the notice and after some time the defendants offered to be satisfied with the demolition of two of the houses, provided that their site were left vacant, and to pay £15 compensation. The plaintiff then brought this action (1) for a *mandamus* compelling the defendants to take down the rest of the "court," viz., the six remaining houses, under the grand jury's presentment in 1904 and to pay compensation, and (2) for an injunction restraining the defendants from making or proceeding with any application for a closing order as to the same houses in default of their being made fit for human habitation as required by the notice of 1909.

HELD—(1) that the "court" referred to in the presentment of 1904 did not include the two rows of houses, and (2) that the defendants had not been shown to be acting in bad faith or abusing their statutory powers; and therefore that the plaintiff's action failed, both for a *mandamus* and for an injunction.

MERRICK v. LIVERPOOL CORPORATION, [1910]  
[2 Ch. 449; 79 L. J. Ch. 751; 103 L. T. 399;  
74 J. P. 445; 8 L. G. R. 966—Eve, J.]

### II. MILK, MEAT, AND WATER SUPPLY.

See also FOOD AND DRUGS, II.

2. *Purveyor of Milk—Registration in One District—Sale in Another on One Occasion—Dairies, Cowsheds and Milkshops Order, 1885, art. 6 (1)—Dairies, Cowsheds and Milkshops Amending Order, 1886, art. 3.*—The respondent was summoned for carrying on the trade of a purveyor of milk in Marylebone without being registered in that district as required by art. 6 (1) of the Dairies, Cowsheds and Milkshops Order, 1885, as amended by the Dairies, Cowsheds, and Milkshops Amending Order, 1886. The respondent was registered in St. Pancras, where his premises were situated, and on one occasion he sold 1d. worth of milk from a churn carried on a hand-cart or barrow in a street in Marylebone. The magistrate held that the respondent was not shown to have carried on the trade of a purveyor of milk in Marylebone by reason of this one transaction, and he dismissed the summons.

HELD—that the magistrate's decision was right.

EMERTON v. HALL, 102 L. T. 889; 74 J. P. 301;  
[8 L. G. R. 686—Div. Ct.]

### III. VACCINATION.

[No paragraphs in this vol. of the Digest.]

### IV. HOSPITALS AND INFECTIOUS DISEASES.

See LOCAL GOVERNMENT, No. 8.

### V. NUISANCE: ABATEMENT AND EXPENSES.

3. *Smoke Abatement—Vessels in Port of Liverpool Trading with Foreign Ports—Liverpool Sanitary Amendment Act, 1854 (17 & 18 Vict. c. xv.), s. 24—Liverpool Improvement Act, 1882 (45 & 46 Vict. c. lv.), s. 77—Liverpool Corporation Act, 1902 (2 Edw. 7, c. cxxl.), s. 57—Liverpool Corporation Act, 1905 (5 Edw. 7, c. clxxvii.), s. 7.*—The provisions for smoke abatement in sect. 24 of the Liverpool Sanitary Amendment Act, 1854, as amended by sect. 77 of the Liverpool Improvement Act, 1882, sect. 57 of the Liverpool Corporation Act, 1902, and sect. 7 of the Liverpool Corporation Act, 1905, do not apply to the furnaces of vessels in the port of Liverpool trading directly between that port and foreign ports.

MACAULAY v. MOSS STEAMSHIP CO., LD., 102  
[L. T. 887; 74 J. P. 243; 8 L. G. R. 615—  
Div. Ct.]

4. *Order of Justices for Abatement—Necessity of Signature by Majority of Justices concurring in Order—Order not Signed till Several Days after Pronounced—Certiorari—Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), ss. 112, 261, 279; Sched. C, Form C.*—Summonses requiring the defendants therein to abate certain alleged nuisances were heard before five justices, and three of them being of opinion that a nuisance existed in each case, orders were made for abatement. Formal orders were drawn up, and were signed, several days after the decision, by two of the justices, one of these being one of the dissenting justices, and served on the defendants. After a conditional order had been obtained to quash the orders, they were signed by the other two justices who formed the majority of the Court.

HELD—(1) that the orders should have been signed by the majority of the adjudicating justices; (2) that the omission of the signatures did not go to jurisdiction, and that such omission could be corrected by the justices signing afterwards; (3) that the delay in signing and completing the orders did not warrant *certiorari*.  
R. (DONNELL) v. LONDONDERRY JUSTICES,  
[1910] 2 I. R. 458—Div. Ct., Ireland.

5. *"Owner"—Ownership—Evidence of—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 94.*—The plaintiffs, after receiving a notice under the Public Health Act, 1875, from the urban sanitary authority of a nuisance existing on certain premises in 1909, carried out the repairs required by the notice at their own expense and sued the defendant as for money paid by them at the defendant's request. The plaintiffs put in admissions by the defendant (1) that the reversion expectant upon a lease, dated January 3rd, 1883, was vested in the defendant, and

**V. Nuisance: Abatement and Expenses—Continued.**

(2) that the premises were held by the plaintiffs as tenants of the defendant under the said lease. The plaintiffs put in the said lease, by which a Mr. and Mrs. H. demised the premises to one G. D. for the remainder of a term of eighty years from September 29th, 1840, less the last seven days thereof, at a rent of £60 per annum. On this evidence the county court judge held that the defendant was the owner of the premises within the meaning of the Public Health Act, 1875. The defendant appealed on the ground that there was no evidence that the rack-rent of the premises was £60 in 1909 so as to bring the defendant within the definition of "owner" in sect. 4 of the Act.

**HELD**—that there was some evidence of such ownership, and that therefore the appeal must be dismissed.

**WAREHAM AND DALE, LD. v. FYPPE**, 74 J. P. [249; 8 L. G. R. 620—Div. Ct.]

**VI. EARTH AND WATER CLOSETS.**

[No paragraphs in this vol. of the Digest.]

**VII. HOURS OF EMPLOYMENT.**

[No paragraphs in this vol. of the Digest.]

**VIII. SLAUGHTER-HOUSES.**

*See* METROPOLIS, No. 8.

**IX. FIRE BRIGADE.**

*See* NEGLIGENCE, No. 8.

**X. BYE-LAWS.**

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[No paragraphs in this vol. of the Digest.]

**PUBLIC LIBRARIES.**

*See* LOCAL GOVERNMENT; RATES.

**PUBLIC MEETINGS.**

*See* CRIMINAL LAW.

**PUBLIC SAFETY AND ORDER.**

*See* EXPLOSIVES; HIGHWAYS; LOCAL GOVERNMENT; METROPOLIS; PUBLIC HEALTH; STREET TRAFFIC; THEATRES, ETC.

**PUBLIC TRUSTEE.**

*See* TRUSTS AND TRUSTEES.

**PUBLIC WORSHIP.**

*See* ECCLESIASTICAL LAW.

**PUNISHMENT.**

*See* CRIMINAL LAW; PRISONS.

**QUANTUM MERUIT.**

*See* AGENCY.

**QUARRIES.**

*See* MINES, MINERALS, AND QUARRIES.

**QUARTER SESSIONS.**

*See* CRIMINAL LAW; MAGISTRATES.

**QUEENSLAND.**

*See* DEPENDENCIES AND COLONIES.

**RAILWAYS AND CANALS.****I. RAILWAYS. COL.**

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## I. RAILWAYS.

See also CARRIERS, II.; COMPANIES, No. 5; CRIMINAL LAW, No. 68; DEPENDENCIES, No. 21; HIGHWAYS, Nos. 17, 19; METROPOLIS, No. 18; MINES, Nos. 9, 10, 11, 13.

### (a) Construction.

#### (i.) Accommodation Works.

1. *Agreement—Right to Make Tunnel—Place and Time Uncertain—Interest in Land—Perpetuity—Personal Covenant—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 71.*—In 1847 a railway company desired to purchase a strip of land for their line which cut in two the estate of J. C., and by an accommodation works agreement dated May 31st, 1847, the company agreed to make a certain level crossing, and that J. C., his heirs, appointees, or assigns, should be at liberty at any time thereafter at his or their own expense to construct a tunnel under the proposed railway where it passed through the land required to be purchased by the company to connect the land so severed. The point at which the tunnel was to be made was not defined. By the conveyance of the land to the company dated December 31st, the right to make the tunnel was reserved to J. C., his heirs, appointees, and assigns. J. C. died in 1880, and under his will W. C., his son, became owner of the land through which the railway had been made, and in 1884 he granted a lease of a part of it on both sides of the railway to the defendants, and the lease contained a declaration that during the continuance of this demise the rights and privileges of the lessor under the agreement of May 31st, 1847, should be vested in the lessees. The plaintiffs disputed the right of the defendants to make a tunnel under the line.

HELD—that the agreement with reference to the tunnel was a personal contract by the plaintiffs, the original covenantors, and therefore did not offend against the rule against perpetuities.

*London and South Western Ry. Co. v. Gomm* ((1882) 20 Ch. D. 562) distinguished.

HELD ALSO—that the benefit of the contract could be assigned to a lessee of a part of the land.

Decision of Eady, J. ([1910] 1 Ch. 19; 79 L. J. Ch. 153; 101 L. T. 866; 73 J. P. 482; 25 T. L. R. 811) affirmed.

HELD ALSO—by Eady, J., that the right to make the tunnel was a reservation of an easement to the landowner and not an exception from the grant by him of the land, and that the provision as to the site of the tunnel was not too vague to be carried out.

*Sanderson v. Cockermouth and Workington Ry. Co.* (1849) 11 Beav. 497; (1850) 2 H. & T. 327, 331) followed.

*Pearce v. Watts* ((1875) L. R. 20 Eq. 492) and *Savill Brothers, Ltd. v. Bethell* ([1902] 2 Ch. 523) distinguished.

HELD ALSO—that the grant of the easement was not inconsistent with the purposes for which the land was taken by the company, and they had power to grant it.

*In re Gonty and Manchester, Sheffield, and Lincolnshire Ry. Co.* ([1896] 2 Q. B. 439) followed.

HELD ALSO—that the agreement referred to further accommodation works within sect. 71 of the Railways Clauses Consolidation Act, 1845.

*SOUTH EASTERN RY. CO. v. ASSOCIATED PORT-  
[LAND CEMENT MANUFACTURERS (1900), LD.,  
[1910] 1 Ch. 12; 79 L. J. Ch. 150; 101 L. T.  
865; 74 J. P. 21; 26 T. L. R. 61; 54 Sol. Jo.  
80—C. A.*

#### (ii.) Parliamentary Deposits.

[No paragraphs in this vol. of the Digest.]

#### (iii.) In General.

2. *Statutory Purchase of Land—Liability to Widen Street if Land “Abuts” on Street—Land Separated from Street by Stream—South Eastern Railway Act, 1899 (62 & 63 Vict. c. 78), s. 20.* Sect. 20 of the South Eastern Railway Act, 1899, provided that if the company should acquire any land which should abut upon any part of Hither Green Lane they should forthwith widen the road. Under the powers contained in the Act the company acquired land separated from Hither Green Lane by a small stream. On an issue raised by the return of the company to a prerogative writ of *mandamus*, Ridley, J., held that the company were estopped by their conduct in the negotiations with the local authorities with reference to the Bill from denying that “land abutting on” ought to be interpreted as applying to the company’s land, separated as it was from the road by the small stream. The railway company appealed.

HELD—that in construing sect. 20 the Court were bound to attach to the word “abut” the only meaning which could give real effect to the intention of the parties, and that the land acquired by the railway company abutted upon the road within the meaning of the section.

*Per* Farwell, L.J.: *Seemle*, actual contiguity need not necessarily exist in law in order that land should, within the meaning of an Act of Parliament, “abut” upon a highway, provided that the land is within such contiguity as brings it reasonably within the sort of “abuttal” which would give rise to the liability contended for, and satisfy the object for which the section was inserted in the Act.

Decision of Ridley, J. (7 L. G. R. 1171) affirmed.

R. (ON THE PROSECUTION OF LEWISHAM [BOROUGH COUNCIL] *v.* SOUTH EASTERN RY. CO., 74 J. P. 137; 54 Sol. Jo. 233; 8 L. G. R. 401—C. A.

3. *Minerals—Right to Support—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 78—85.*—The application of the mining

### I. Railways—Continued.

sections of the Railways Clauses Consolidation Act, 1845, is not limited to the case of land which has been acquired compulsorily.

Two seams of coal underlying an area of land which included the site of the plaintiffs' railway tunnel were demised to the defendants, and by the lease the other mines and minerals underlying the area were reserved to the owners. Subsequently, after a statutory notice of the defendants' intention to work, the plaintiffs purchased the defendants' leasehold interest, and from the lessor the reversionary interest, in the two seams underlying and adjacent to the tunnel.

**HELD**—that whether the transaction was a payment of compensation evidenced by a conveyance, or whether it was in fact a sale and purchase, the railway company obtained under it no right of support from the minerals underlying the two seams.

By another lease the defendants became the lessees of a further seam of coal underlying the railway company's tunnel and adjacent lands. The defendants gave notice of their intention to work this seam in the vicinity of the tunnel, and it was proved that such working would cause serious risk to the railway and works within an area the limits of which extended beyond the prescribed distance of forty yards.

**HELD**—that the railway company had no common law right of support from minerals vested in the defendants lying beyond the prescribed distance, and accordingly that they were not entitled to an injunction restraining the defendants from working the same.

*Great Western Ry. Co. v. Bennett* ((1867) L. R. 2 H. L. 27) applied.

LONDON AND NORTH-WESTERN RY. CO. *v.* [HOWLEY PARK COAL AND CANAL CO., [1910] W. N. 163; 103 L. T. 26; 26 T. L. R. 541; 54 Sol. Jo. 616.]

### (b) Working and Management.

See also NEGLIGENCE, No. 14.

#### (i.) In General.

3A. *Through Traffic—Exchange Point—Application for Order to Receive Traffic*—"Reasonable Facilities"—*Question of Fact*.—In some cases questions as to what is meant by reasonable facilities and as to what power the Railway and Canal Commissioners have to make an order directing that reasonable facilities should be afforded may be questions of law. But where the sole question is one of fact, namely, whether under the particular circumstances of the case what the applicants are asking for is reasonable, the Commissioners are sole judges and the Court of Appeal has no power to review their decision.

Decision of Rly. and Can. Com. (13 Rly. Cas. 266) affirmed.

GREAT CENTRAL RY. CO. *v.* LANCASHIRE AND [YORKSHIRE RY. CO., *Times*, March 9, 1910—C. A.

### (ii.) Rates.

See also CARRIERS, No. 5.

4. *Traders' Siding—Services Incident to Conveyance—Sorting Trucks—Truck Hire—Rebate—Railway and Canal Traffic Act, 1894* (57 & 58 Vict. c. 54), s. 4—*Rates and Charges Order, 1891, ss. 5 (1), 9.*—Conveyance, properly so called, by a railway company to the works of a trader who has private sidings does not terminate until the private siding-points are reached, but it does not follow that all use of the railway company's sidings before the private siding-points are reached is part of conveyance. It is a question of fact in each case whether the service rendered by the railway company is incident to conveyance, or is due to request, express or implied, of the trader.

The applicants' outward traffic was placed in trucks by the applicants' servants upon their own sidings in whatever order the trucks happened to be ready. The trucks were consigned to different destinations lying in different directions. Before the trucks could be attached to the train which should convey them, they had to be removed to sidings of the railway company where they could be sorted ready for conveyance.

**HELD**—that such sorting of the trucks was not part of the duty of conveyance, but was work done for the applicants at their request made when they tendered trucks mixed up in such an order as to make it impossible to convey them to their several destinations without doing it.

Sect. 9 of the Rates and Charges Order is perfectly general in its terms, and applies whether the journey to be performed is wholly over the line of the particular railway or is partly over that railway and partly over the line of another company.

BIRMINGHAM CORPORATION *v.* MIDLAND RY. [CO., LONDON AND NORTH WESTERN RY. CO., AND GREAT WESTERN RY. CO., 101 L. T. 920; 26 T. L. R. 46—Rly. and Can. Com.]

5. *Trader's Vans—Deficiency of Railway Company's Vans—Reasonable Facility—Railway and Canal Traffic Act, 1854* (17 & 18 Vict. c. 31), s. 2.—Where there is a shortage in a railway company's trucks or vans, and a trader asks to have his goods carried in his own trucks or vans, he is asking for a "reasonable facility" within sect. 2 of the Railway and Canal Traffic Act, 1854, and he is entitled in such circumstances to have the charge for conveyance reduced. There is, however, no other obligation on a railway company to haul the ordinary goods of a trader in the latter's own trucks.

Decision of Rly. and Can. Com. ([1910] 1 K. B. 778; 79 L. J. K. B. 771; 102 L. T. 654; 26 T. L. R. 315) affirmed.

SPILLERS AND BAKERS, LD. *v.* GREAT WESTERN [RY. CO. (ASSOCIATION OF PRIVATE OWNERS OF RAILWAY ROLLING STOCK, INTERVENERS), [1910] W. N. 250; 27 T. L. R. 97; 55 Sol. Jo. 75—C. A.]

## I. Railways—Continued.

6. *Undue Preference—Purchase of Line by Railway Company from Trader—Payment in Cash and Services—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 27.*—Inequality of rates may be explained and accounted for by a fair and honest bargain the consideration for which has been duly conveyed to and is enjoyed by the railway company. An agreement of purchase between a railway company and a trader, whereby the latter receives payment, partly in cash and partly in railway services at rates lower than those charged to other persons, must be viewed by the Court with jealousy in order to see that it does not contravene those fundamental principles of equality which should regulate the dealings of a railway company with its customers; but the Court cannot hold as a matter of law that payment for railway services or accommodation must take the form of cash.

Decision of Rly. and Can. Com. ([1909] 1 K. B. 486; 78 L. J. K. B. 214; 100 L. T. 204; 25 T. L. R. 158; 13 Rly. Cas. 244) affirmed.

HOLWELL IRON CO., LD. v. MIDLAND RY. CO., [1910] 1 K. B. 296; 79 L. J. K. B. 460; 101 L. T. 695; 26 T. L. R. 110—C. A.

7. *Through Rates—Apportionment Between Railway Companies—Reasonable Facilities—Existing Through Rates—Application to Re-apportion—Jurisdiction of Court—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 25.*—The Railway and Canal Commission Court has no jurisdiction, under sect. 25 of the Railway and Canal Traffic Act, 1888, or otherwise, on the application of a railway company to re-apportion as between railway companies themselves existing through rates, which have already been apportioned between the different carrying companies, inasmuch as the reasonable facility to the public continues the same so long as the through rate exists and the total amount thereof remains unaltered.

MANCHESTER SHIP CANAL CO. v. LONDON AND [NORTH WESTERN RY. CO., [1910] 2 K. B. 913; 79 L. J. K. B. 1103; 103 L. T. 317—Rly. and Can. Com.

8. *Railway Company's Vessel—Bill of Lading—Unreasonable Condition—Liability of Company—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 7—Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), s. 31.*—A railway company contracted to carry a cargo by one of their steamers under a bill of lading, which contained a clause excepting them from liability for every kind of negligence on the part of any of their servants.

HELD—that in the absence of a *bonâ fide* alternative rate for the carriage of the cargo, such a condition was void as being unreasonable within the meaning of sect. 7 of the Railway and Canal Traffic Act, 1854.

RIGGALL & SONS v. GREAT CENTRAL RY. CO., [101 L. T. 392; 25 T. L. R. 754; 53 Sol. Jo. 716; 14 Com. Cas. 259; 11 Asp. M. C. 303—Pickford, J.]

## (iii.) Passenger Fares.

See TRAMWAYS, No. 7.

## (iv.) Mails.

[No paragraphs in this vol. of the Digest.]

## (v.) Duty towards Passengers, etc.

See also TRAMWAYS, No. 7.

9. *False Imprisonment—Special Constable—Liability of Company for Acts of Constable—Great Eastern Railway (General Powers) Act, 1900 (63 & 64 Vict. c. cx.), s. 50.*—Under sect. 50 of the Great Eastern Railway (General Powers) Act, 1900, the relation of master and servant is created between the railway company and a special constable appointed by virtue of that section; and if such constable arrests a person on suspicion of felony without reasonable grounds for believing that a felony has been committed by him the railway company is liable.

Guff v. Great Northern Ry. Co. ((1861) 3 E. & E. 672) and Edwards v. Midland Ry. Co. ((1880) 50 L. J. Q. B. 281) approved.

LAMBERT v. GREAT EASTERN RY. CO., [1909] 2 K. B. 776; 79 L. J. K. B. 32; 101 L. T. 408; 73 J. P. 445; 25 T. L. R. 734; 53 Sol. Jo. 732—C. A.

10. *Lavatory Accommodation.*—Per Cozens-Hardy, M.R.: A railway company is bound to afford reasonable lavatory accommodation for the use of passengers, and may be compelled by the Railway Commissioners so to do.

METROPOLITAN WATER BOARD v. LONDON, [BRIGHTON AND SOUTH COAST RY. CO., [1910] 2 K. B. 890; 79 L. J. K. B. 1179; 103 L. T. 304; 74 J. P. 409; 26 T. L. R. 676; 8 L. G. R. 930—C. A.]

See S. C. under METROPOLIS, X.

## (vi.) Trespass on Railway.

[No paragraphs in this vol. of the Digest.]

## (vii.) Locomotives.

[No paragraphs in this vol. of the Digest.]

## (viii.) Receivers.

[No paragraphs in this vol. of the Digest.]

## II. CANALS.

See HIGHWAYS, No. 17.

## III. RAILWAY AND CANAL COMMISSIONERS.

See also I. (b) (ii.), *supra*; TELEGRAPHS, Nos. 1, 2.

11. *Jurisdiction—Reasonable Facilities—Question of Legal Right—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 2.*—Certain traders having applied to the Railway and Canal Commissioners for an order enjoining three railway companies to desist from refusing to carry traders' traffic in waggons belonging to the traders, the railway companies objected that the application was not within the jurisdiction of the Commissioners in respect that the

### III. Railway and Canal Commissioners—*Continued.*

applicants were really seeking a declaration of a legal right.

**HELD**—that as the applicants claimed that traders' waggons should be received on the railways as a reasonable facility, and not as a matter of right, the Commissioners had jurisdiction.

JOHN WATSON, LD. *v.* CALEDONIAN RY. CO.,  
[1910] S. C. 1066; 47 Sc. L. R. 848—  
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## RAPE.

See CRIMINAL LAW.

## RATES AND RATING.

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### I. COUNTY RATE.

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### II. DRAINAGE RATE.

[No paragraphs in this vol. of the Digest.]

### III. GENERAL DISTRICT RATE.

See also V., *infra*.

#### (a) In General.

1. *House Wholly Let Out in Apartments or Lodgings—Liability of Owner to be Rated—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7.*—The respondent was the

owner of a dwelling-house in Hackney, and was rated and assessed as such owner in respect of the house to a general rate. The parish of Hackney at the date of the passing of the Representation of the People Act, 1867, was, and has ever since been, wholly situate in a Parliamentary borough. The respondent did not occupy or reside in or exercise any supervision or control over the house. The house was a private dwelling-house consisting of a basement, a ground floor, and two other floors, and was let by the respondent to and was occupied by three tenants. Each tenant had a separate letting, a separate rent book, and a separate key, and had exclusive use and occupation of the rooms so let, but none of the sets of rooms were structurally separated from each other.

**HELD**—that the respondent was rightly rated in respect of the whole house pursuant to sect. 7 of the Representation of the People Act, 1867.

*Stamper v. Sunderland Overseers* ((1869) L. R. 3 C. P. 388) followed.

GRIGGS *v.* STEVENS, 101 L. T. 950; 74 J. P. 67;  
[8 L. G. R. 63—Div. Ct.]

2. *Over-Payment in Previous Years—Sufficient Cause for Non-Payment—Tramway—"Railway"—Agreement to Refund if Appeal against other Rating Authority Successful—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 256.*—The appellants were summoned by the respondents for £447 8s. general district rate, dated June 4th, 1908, and it was proved that in October, 1904, there was an appeal by the appellants against the Thornton Urban District Council, claiming to be rated as a railway, which appeal went to the House of Lords and was decided on April 1st, 1909, in favour of the appellants being rated at one-fourth for the tramroad portion of their undertaking. Whilst the appeal was pending the respondents laid other rates in 1905 and 1906, amounting together to £1,056 18s. 8d., in which the appellants were rated in full for the tramroad portion, and not at one-fourth, which would have reduced the amount to £596 10s. 8d. In August, 1905, the respondents undertook to refund to the appellants the proportioned amount in case they were successful in their appeal. The appellants consequently paid the full amount of £1,056 18s. 8d., and had thus made an over-payment of £460 8s.

**HELD**—that the appellants had shown sufficient cause for non-payment of the rate dated June 4th, 1908.

BLACKPOOL AND FLEETWOOD TRAMROAD CO.  
[*v.* BISPHAM-WITH-NORBRECK URBAN DISTRICT COUNCIL, [1910] 1 K. B. 592; 79 L. J. K. B. 322; 102 L. T. 238; 74 J. P. 141; 8 L. G. R. 149—Div. Ct.]

#### (b) Exemption.

[No paragraphs in this vol. of the Digest.]

#### (c) Occupation.

See also No. 9, *infra*.

3. *Exhibition Buildings—Lease of Premises—Alterations by Lessors—Buildings for Side*



### III. General District Rate—Continued.

*Shows and Machinery Left on Premises—Preparation for Another Exhibition—Evidence of Occupation by Lessors.*—In 1907 the appellants acquired a lease of land at Shepherd's Bush and let it to the Franco-British Corporation for two years from January 1st, 1907, for the purposes of an exhibition. On December 31st, 1908, the Franco-British Corporation handed over possession to the appellants, and the appellants were inserted in the rate as occupiers from January 1st, 1909, in place of the Franco-British Corporation. On March 29th, 1909, the appellants let the land to the Shepherd's Bush Exhibitions, Ltd., which then entered into possession and carried on an exhibition from May to October, 1909. From January 1st to March 31st, 1909, alterations were being carried out by the appellants or by the Shepherd's Bush Exhibition, Ltd., with the leave of the appellants, with a view to prepare for the exhibition of 1909. Upon the grounds a number of buildings for side shows, which had been used by concessionaires during the Franco-British Exhibition and which contained valuable machinery, were kept ready for connection and use, and the appellants derived benefit therefrom. Some of the cooking apparatus and other refreshment appliances remained on the grounds from the close of the Franco-British Exhibition throughout the period from January 1st to March 31st, 1909, and were used by the same refreshment contractors in the exhibition of 1909.

HELD—that there was sufficient evidence to justify quarter sessions in coming to the conclusion that from January 1st to March 31st, 1909, the appellants were in beneficial and therefore rateable occupation.

SHEPHERD'S BUSH IMPROVEMENTS, LD. v. [HAMMERSMITH BOROUGH COUNCIL, 102 L. T. 819; 74 J. P. 280; 8 L. G. R. 646—Div. Ct.

4. *Reduction in Rates—Owners Who are also Occupiers—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1).*—Sect. 211 (1) of the Public Health Act, 1875, which provides that in certain cases the owner instead of the occupier may be rated to a general district rate at a reduced estimate of the net annual value, does not authorise the local authority to rate at such reduced estimate owners who are also occupiers of the premises rated.

R. v. PROPERT, EX PARTE JONES, [1911] 1 K. B. [83; [1910] W. N. 245; 74 J. P. 474—Div. Ct.

#### (d) Retrospective Rate.

[No paragraphs in this vol. of the Digest.]

### IV. METROPOLITAN RATING.

See also No. 7, *infra*.

5. *Alteration in Value—Public-house—Increase of Licence Duty—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47—Finance Act, 1910 (10 Edw. 7, c. 8).*—The increase of the licence duty under the Finance Act, 1910, imposed upon a public-house in the metropolis was from £35 to £130.

HELD—that this was *prima facie* evidence of a reduction in value of the public-house within sect. 47 of the Valuation (Metropolis) Act, 1869, so as to entitle the licensee to call upon the assessment committee to appoint a person to make a provisional list under that section containing the gross and rateable value of the public-house as reduced.

Decision of Div. Ct. (26 T. L. R. 553) affirmed.

R. v. SHOREDITCH ASSESSMENT COMMITTEE, [EX PARTE MORGAN, [1910] 2 K. B. 859; 103 L. T. 262; 74 J. P. 361; 26 T. L. R. 663; 8 L. G. R. 744—C. A.

### V. POOR RATE.

#### (a) In General.

6. *Improper Alteration of Rate-Book—Remedy—Mandamus.*—Where after a rate has been made an alteration has been made in the rate-book by the improper addition of the names of certain persons, a *mandamus* to strike out the names is not the proper remedy, as the persons whose names have been so inserted can, if they are summoned for non-payment of the rate, show cause before the magistrates why a distress warrant should not be issued against them.

R. v. MONKEN HADLEY OVERSEERS, EX PARTE [HARNETT AND OTHERS, 74 J. P. 169; 8 L. G. R. 363—Div. Ct.

#### (b) Appeal.

[No paragraphs in this vol. of the Digest.]

#### (c) Assessment.

[No paragraphs in this vol. of the Digest.]

#### (d) Distress.

7. *Distress and Imprisonment—Landlord and Tenant—Contract by Landlord to Pay Rates—Breach—Damages—Remoteness—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 6, 33—Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 10—London Government Act, 1899 (62 & 63 Vict. c. 14), s. 10 (2).*—The Summary Jurisdiction Act, 1879, does not apply to proceedings for the recovery of poor rates or rates recoverable in the same way as poor rates.

R. v. PRICE (1880), 5 Q. B. D. 500, approved by the Court of Appeal in *Southwark and Vauxhall Water Co. v. Hampton Urban Council* ([1899] 1 Q. B. 273), is binding on the Court of Appeal.

The owner of a house in London let to a weekly tenant on the terms of the landlord paying rates and taxes. A distress warrant was issued against the tenant in respect of an overdue instalment of a general rate and costs, and, on a return of *nulla bona* being made to the warrant, a warrant for commitment was issued against him. Before the warrant was put in force the landlord gave to the tenant a cheque for the rate, payable to the order of the rate collector, but the rating authorities refused to accept the cheque unless the costs were added, and the tenant was then sent to prison, but was shortly afterwards released on paying the full amount of the rate and costs. In an action by the tenant for damages against the landlord

### V. Poor Rate—Continued.

for imprisonment consequent on the landlord's breach of his contract to pay the rates:—

**HELD**—that the defendant was liable for damages in respect of the imprisonment.

Decision of Div. Ct. reversed.

**ATKINS v. HUTTON**, 103 L. T. 514; 74 J. P. 329; [8 L. G. R. 513—C. A.]

**8. Distress Warrant—Costs—Justices' Discretion—Distress for Rates Act, 1849** (12 & 13 Vict. c. 14), s. 1.]—Justices have a discretion under sect. 1 of the Distress for Rates Act, 1849, as to whether they will award costs to a person applying for a warrant of distress for non-payment of poor rate.

**R. v. BAKER AND OTHERS, Ex PARTE GUILD-FORD OVERSEERS**, 100 L. T. 522; 73 J. P. 166; 22 Cox, C. C. 77; 7 L. G. R. 422—Div. Ct.

### (e) Occupation.

**9. Mansion-house and Grounds—Occupation of Part of Premises—Enforceability of Rate on Whole.**]—The appellant was summoned for rates in respect of a mansion-house, stables, gardens, and meadow, which were assessed in one lump sum and described in the rate-book as "mansion-house and grounds." The justices found that at the date of the rates being made the mansion-house itself was unoccupied, but that the gardens, stables, and meadow were occupied by the appellant.

**HELD**—that the rates in respect of the whole could not be enforced.

**LANGFORD v. COLE**, 102 L. T. 808; 74 J. P. [229; 8 L. G. R. 771—Div. Ct.]

### (f) Rateability.

**10. Burial Ground—Incumbent of Parish—Occupier—Receipt of Burial Fees—Poor Relief Act, 1601** (43 Eliz. c. 2), s. 1—*Poor Rate Exemption Act, 1833* (3 & 4 Will. 4, c. 30), s. 1.]—A cemetery, which had been duly consecrated, was vested in the rector and incumbent of a parish by sect. 13 of the Church Building Act, 1845, for the use of the inhabitants of the parish. The rector received the burial fees paid in respect of interments therein.

**HELD**—that the rector was the occupier of the cemetery within the meaning of sect. 1 of the Poor Relief Act, 1601; that he received the burial fees as incidental to his occupation of the cemetery; and that he was therefore liable to be rated in respect thereof.

Decision of C. A. ([1908] 1 K. B. 835; 77 L. J. K. B. 661; 98 L. T. 781; 72 J. P. 172; 24 T. L. R. 388; 6 L. G. R. 427) affirmed.

**WINSTANLEY v. NORTH MANCHESTER OVERSEERS**, [1910] A. C. 7; 79 L. J. K. B. 95; 101 L. T. 616; 74 J. P. 49; 26 T. L. R. 90; 54 Sol. Jo. 80; 8 L. G. R. 75—H. L.

**11. Sewers—Partly Above and partly Below Ground—Payments for Right of Entry—West Kent Main Sewerage Act, 1875** (38 & 39 Vict. c. cxlii), ss. 53, 55.]—The W. K. Main Sewerage Board, under a local Act, constructed sewers

in the parishes of C., D., and B. Those in C. and D. were partly above and partly below ground; those in B. were wholly below ground. Payments were made by agreement by various local authorities, which were not constituent authorities of the W. K. Main Sewerage Board, for a right of entry into the sewers, and main sewer rates were also levied upon the occupiers of mills, tanneries, and factories who discharged their trade refuse into the sewers otherwise than by agreement; but such payments included nothing by way of profit to the W. K. Main Sewerage Board.

**HELD**—that although in two of the cases the sewers were partly above and partly below ground, yet there was no exemption from rateability on that account as the parts above and the parts below formed one subject-matter, and that as the payments were made for the use of the sewers, their rateability was established.

*Ystradgofwg and Pontypridd Main Sewerage Board v. Newport Assessment Committee* ([1901] 1 K. B. 406) followed.

Decision of Div. Ct. (74 J. P. 129; 8 L. G. R. 287) affirmed.

**WEST KENT MAIN SEWERAGE BOARD v. DART-FORD UNION ASSESSMENT COMMITTEE AND OVERSEERS OF CRAYFORD, SAME v. DARTFORD UNION ASSESSMENT COMMITTEE AND OVERSEERS OF DARTFORD, SAME v. DARTFORD UNION ASSESSMENT COMMITTEE AND OVERSEERS OF BEXLEY**, 74 J. P. 292; 8 L. G. R. 677—C. A.

**12. Sewers—Partly Above and partly Below Ground—No Payments for Use.**]—The D. V. Main Sewerage Board, under statutory powers, constructed a sewer from W., joining the W. K. Main Sewerage Works at D. The sewer passed through a number of parishes, and was partly above and partly below ground, but was wholly below ground in the parishes in respect of which appeals were brought. The expenses of the D. V. Main Sewerage Board were raised out of a common fund contributed to by their constituent authorities, but no other payments beyond such contributions were received by the D. V. Main Sewerage Board.

**HELD**—that although the sewer was above ground in some parishes in regard to which there was no appeal, yet, inasmuch as no payments were made for its use by non-constituent authorities, it was not rateable in the parishes in respect of which appeals were brought.

**DARENTH VALLEY MAIN SEWERAGE BOARD [v. DARTFORD UNION ASSESSMENT COMMITTEE AND OVERSEERS OF DARENTH]**, 74 J. P. 129—Div. Ct.

## VI. SEWER RATE.

**13. Town Divided into Separate Draining Districts—General Rate Levied on Whole Area, and not on Districts Separately—Validity—Towns Improvement Act, 1847** (10 & 11 Vict. c. 34), ss. 23, 29, and 179.]—Where a town or district is divided into separate drainage districts under sect. 23 of the Towns Improvement Act, 1847, a general sewer rate under sect. 29, made for the purpose of maintaining and cleaning sewers, may be levied

**VI. Sewer Rate—Continued.**

generally upon the whole drainage area, and need not be levied separately in respect of the separate drainage districts.

**SURBITON URBAN DISTRICT COUNCIL v. UPJOHN**,  
[102 L. T. 736; 74 J. P. 314; 8 L. G. R. 786  
—Div. Ct.]

**VII. RECTOR'S RATE.**

[No paragraphs in this vol. of the Digest.]

**RATIFICATION.**

See AGENCY.

**REAL PROPERTY AND CHATTELS REAL.**

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See also DESCENT AND DISTRIBUTION; DOWER; EXECUTORS, No. 17; HIGHWAYS, No. 4; LIMITATION OF ACTIONS, No. 3; MORTGAGE; PARTITION; PERPETUITIES; POWERS; SALE OF LAND; SETTLEMENTS; TRUSTS, No. 11; WILLS, XXIII., and No. 37.

**I. GENERAL.**

1. *Executory Gift Over on Default or Failure of Issue—Issue Attaining Twenty-one—Equitable Estate in Fee—Conveyancing Act, 1882* (45 & 46 Vict. c. 39), s. 10.—The words "entitled to land" in sect. 10 of the Conveyancing Act, 1882, whereby an executory limitation over on default or failure of issue is rendered void as soon as there is living of that issue any one who has attained the age of twenty-one, are not confined in their meaning to "legally entitled to land," and the section applies to an equitable fee simple.

**IN RE SHRUBB, SHRUBB v. SHRUBB**, [1910]  
[W. N. 143; 45 L. J. N. C. 390; 129 L. T. Jo.  
182—Eady, J.]

**II. ESTATES TAIL.**

See also PERPETUITIES, No. 2; SETTLEMENTS, No. 4.

**(a) General.**

[No paragraphs in this vol. of the Digest.]

**(b) Disentailing.**

2. *Infant Tenant in Tail in Remainder—Maintenance—Order of Court—Disentailing Deed by*

*Way of Mortgage—Jurisdiction.*—The Court has no power to direct a disentailing deed by way of mortgage of the estate of an infant tenant in tail in remainder.

*In re Hamilton* ((1885) 31 Ch. D. 291) and *Cadman v. Cadman* ((1886) 33 Ch. D. 397) followed.

**IN RE HAMBROUGH'S ESTATE, HAMBROUGH v. HAMBROUGH**, [1909] 2 Ch. 620; 79 L. J. Ch. 19; 101 L. T. 521; 53 Sol. Jo. 770—Warrington, J.

See S. C. under INFANTS, No. 3.

3. *Misconception of Person Disentailing—Consent of Protector of Settlement—Intention of Person Disentailing—Fines and Recoveries Act, 1833* (3 & 4 Will. 4, c. 74), ss. 42, 43.—A person believing himself to be entitled to certain estates as tenant in tail male or tenant in tail in possession executed a disentailing assurance, by which he purported to discharge the property "from all estates in tail male or in tail . . . and all estates, rights, interests and powers to take effect after the determination or in defeasance of such estates." It was subsequently decided that he was entitled to a life estate in the property with remainder to his sons in tail male, with remainder to himself in tail general. He died without leaving issue, and it was now contended that as he did not, at the time of executing the deed, know the nature of the estate to which he was entitled, he could not have given his consent as protector of the settlement, and had, consequently, only created a base fee so as to bar his own issue.

**HELD**—that on the true construction of the disentailing assurance, and in the events that had happened, his misconception of his legal position was immaterial.

**IN RE WILMER, DECEASED, WINGFIELD v. WILMER**, [1910] 2 Ch. 111; 79 L. J. Ch. 617; 102 L. T. 723; 54 Sol. Jo. 563—Parker, J.

4. *Will—Construction—Estate Tail in Possession—Cutting Down Clause—Disentailing Deed—Accumulations.*—A testator left his residuary real estate to trustees in strict settlement, with an accumulation clause before the first estate tail for the benefit of the person or persons who should at the expiration of a period be entitled under the trusts and limitations of his will to the possession and enjoyment of the real estate thereby devised. On the vesting of the first estate tail in the plaintiff (but before the period had expired), the plaintiff barred the entail.

**HELD**—that the interest of the trustees was merely in the nature of a charge; that the plaintiff was, ever since his estate tail vested, in possession and enjoyment under the will; that, therefore, even if the disentailing deed had not put an end to the trust for accumulation, the plaintiff and his heirs and assigns were now the only persons who could become entitled to the accumulations; and that, therefore, the plaintiff was entitled to enter into possession and receive the income of the property.

**IN RE TREVANION, TREVANION v. LENNOX**, [1910] 2 Ch. 538; 103 L. T. 212; 54 Sol. Jo. 749—Joyce, J.

## II. Estates Tail—Continued.

5. *Disentailing Deed*—*Habendum—Rectification—Jurisdiction—Construction—Fines and Recoveries Act, 1833* (3 & 4 Will. 4, c. 74), s. 47—*Fines and Recoveries (Ireland) Act, 1834* (4 & 5 Will. 4, c. 92), s. 45—*Conveyancing Act, 1881* (44 & 45 Vict. c. 41), s. 51.]—Sect. 47 of the *Fines and Recoveries Act, 1833* (sect. 45 of the *Irish Act of 1834*), while prohibiting the Court from transforming, by the application of any equitable doctrine, a deed which, according to its legal construction, is ineffective to bar an entail, into a valid disentailing assurance, does not take away the general jurisdiction of a Court of Equity to rectify a disentailing deed, so as to bring its provisions into conformity with the actual intention of the parties.

HELD—that, having regard to the terms of the deed in question, the words “in fee” were capable of being, and should be, construed as meaning “in fee simple”; and, accordingly, that, under sect. 51 of the *Conveyancing Act, 1881*, the deed was effectual to pass an estate in fee simple.

*Hall-Dare v. Hall-Dare* (1885) (31 Ch. D. 251) and *Banks v. Small* ((1887) (36 Ch. D. 716) considered. *In re Ethel and Mitchell and Butler's Contract* ([1901] 1 Ch. 945) distinguished.

IN RE OTTLEY'S ESTATE, [1910] 1 I. R. 1—[Wylie, J., Ireland.]

## III. LAND TRANSFER.

6. *Restrictive Conditions—Building Scheme—Effect of Registration—Land Transfer Act, 1875*, s. 84—*Land Transfer Act, 1897* (60 & 61 Vict. c. 65), *Sched. I.*]—Registration under sect. 84 of the *Land Transfer Act, 1875*, as amended by *Sched. I.* of the *Land Transfer Act, 1897*, of restrictive conditions binding registered land, does not, of itself, whether by virtue of the Acts, or as evidence of a building scheme, render the conditions enforceable by or against purchasers of different portions of the registered land, where there is no building scheme in fact.

Decision of Warrington, J. ([1910] 1 Ch. 84; 101 L. T. 558; 26 T. L. R. 87; 54 Sol. Jo. 65) affirmed.

WILLÉ v. ST. JOHN, [1910] 1 Ch. 325; 79 [L. J. Ch. 239; 102 L. T. 383; 26 T. L. R. 405; 54 Sol. Jo. 269—C. A.]

7. *Registered Leasehold—Mortgage by Sub-demise—Sale by Mortgage—Duty of Vendor to Get Himself Registered as Proprietor—“Registered Land”—Land Transfer Act, 1897* (60 & 61 Vict. c. 65), s. 16 (2).]—The owner of a leasehold interest in certain houses mortgaged them by way of sub-demise for the residue of the term less the last day thereof. The assignee of the mortgagor procured himself to be put as proprietor of the term on the leasehold register at the Land Registry. The assignee of the mortgagee having died, his executor sold the term, less the last day thereof, under his statutory power of sale. The purchaser required that the vendor should at his own expense procure himself to be registered as proprietor of the land, so as to be able to execute a proper transfer to the

vendor, and so as to be able to give the vendor authority to inspect the register.

HELD—that as the land was registered for the whole of the residue of the term, and as the vendor was only selling a portion of that term, he was not selling registered land within the meaning of sub-sect. 2 of sect. 16 of the *Land Transfer Act, 1897*, and that therefore the purchaser could not insist upon his requisitions.

IN RE VOSS AND SAUNDERS' CONTRACT, [1911]

[1 Ch. 42; [1910] W. N. 217; 80 L. J. Ch. 33; 103 L. T. 493; 55 Sol. Jo. 12—Warrington, J.]

## IV. MERGER.

[No paragraphs in this vol. of the Digest.]

## RECEIPT.

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## RECEIVERS.

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See BANKRUPTCY; COMPANIES, Nos. 37, 38, 39; LANDLORD AND TENANT, No. 6; METROPOLIS, No. 21; MORTGAGE; PRACTICE AND PROCEDURE; SOLICITORS, Nos. 3, 16.

### I. IN PARTNERSHIP PROCEEDINGS.

1. *Receiver and Manager—Partnership Action—Receiver's Right to Indemnity.*]—A receiver and manager who has been appointed by the Court in an action—for example, a partnership action—is not a trustee, nor is he the agent of the parties, and he cannot look to them, but only to the assets under the control of the Court, for indemnity in respect of expenditure properly incurred by him. The fact that he has been appointed by consent of all parties makes no difference in this respect.

BOEHM v. GOODALL, [1910] W. N. 259; 27 [T. L. R. 106; 55 Sol. Jo. 108—Warrington, J.]

### II. BY WAY OF EQUITABLE EXECUTION.

See WILLS, No. 32.

### III. IN GENERAL.

2. *Receiver—Motion for Appointment of Receiver—Death of Sole Defendant—Abatement of Action.*]—On the death of a sole defendant after a motion has been launched for a receiver in respect of property alleged to be in his hands as trustee, the Court has jurisdiction, in spite of the abatement of the action caused by his death, to appoint a receiver to protect the property



**III. In General—Continued.**

pending the constitution of a representative of the deceased.

*Re Parker, Cash v. Parker* ((1879), 12 Ch. D. 293) followed.

IN RE CLARK, CLARK v. CLARK, [1910] W. N. [234; 55 Sol. Jo. 64—Warrington, J.]

**RECEIVING STOLEN GOODS.**

*See* CRIMINAL LAW AND PROCEDURE.

**RECOGNISANCES.**

*See* CRIMINAL LAW AND PROCEDURE: MAGISTRATES.

**RECREATION GROUNDS.**

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**RECTIFICATION OF INSTRUMENTS.**

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**REFORMATORIES.**

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**REGISTRATION OF BIRTHS, MARRIAGES, AND DEATHS.**

*See* EXECUTORS AND ADMINISTRATORS; HUSBAND AND WIFE; INFANTS; POOR LAW.

**REGISTRATION OF LAND.**

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**REGISTRATION OF VOTERS.**

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**RELEASE.**

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**REMAINDER.**

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**RENT-CHARGES AND ANNUITIES.**

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**I. RENT-CHARGES.**

*See also* No. 3, *infra*; HIGHWAYS, No. 4; LIMITATION OF ACTIONS, No. 2; LOCAL GOVERNMENT, No. 12; POWERS, No. 12.

1. *Jointure—Arrears—Sale of Property Charged with Jointure—Charge on Proceeds of Sale—Capital or Income—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21, sub-s. 2.*—Where a jointure rent-charge is charged upon land which is subsequently sold, the Court has jurisdiction to order the arrears of the jointure to be paid out of the proceeds of sale, and the Court in the exercise of its discretion will make such an order without prejudice to the question out of what fund such arrears are ultimately to be paid.

The Settled Land Act, 1882, s. 21, sub-s. 2, applies to the arrears of a jointure rent-charge on the settled land.

Dicta in *In re Knatchbull's Settled Estate* ((1884) 27 Ch. D. 349) and in *In re Frewen* ((1888) 38 Ch. D. 383) distinguished.

IN RE DUKE OF MANCHESTER'S SETTLEMENT, [1910] 1 Ch. 106; 79 L. J. Ch. 48; 101 L. T. 892; 26 T. L. R. 5; 53 Sol. Jo. 868—Eve, J.

2. *Mortgage of Land subject to Rent-charge—Mortgagee not taking Possession—Liability of Mortgagee for Rent-charge as Terre-tenant.*—The defendant was mortgagee of freehold land subject to a chief rent vested in the plaintiff. The mortgagor having made default in payment of the mortgage interest the defendant appointed a receiver under the Conveyancing Act, 1881.

**I. Rent-charges—Continued.**

The plaintiff being unable to get the rent from the mortgagor, brought an action to recover it from the defendant, the mortgagee, as terre-tenant of the land.

**HELD**—that the defendant, being as mortgagee the legal owner of the land, and by the mortgagor's default entitled to take possession at any time he chose, was the terre-tenant and liable for the rent, although he had never been in actual possession.

CUNDIFF *v.* FITZSIMMONS, [1910] W. N. 270 ;  
[130 L. T. Jo. 152—Div. Ct.]

**II. ANNUITIES.**

See also EXECUTORS, No. 19 ; SETTLEMENTS, No. 5 ; WILLS, Nos. 49, 50.

**3. Deed of Grant — Construction — Annuity Charged on Easements and Chattels—Realty or Personalty.**—By an indenture of grant dated August 14th, 1827, R. B., the tenant for life of one eighth share in certain realty and personalty constituting the old Chester Waterworks, joined with the owners of the other seven shares in conveying such waterworks to the City of Chester Waterworks Company. The grant contained a recital to the effect that the consideration for the grant had been agreed at the annual sum of £500 to be payable for ever by quarterly payments to be secured as therein mentioned and to be divided between the grantors, their respective executors, administrators, and assigns according to their shares and interest in the waterworks. The property granted consisted mainly of easements, or rights in the nature of easements, and of personal chattels ; but it was not clear that it comprised any corporeal as opposed to incorporeal hereditaments, though there were words sufficient to pass such corporeal hereditaments (if any) as formed part of the old Chester Waterworks.

**HELD**—that the indenture according to its true construction was intended to create and, so far as it operated at all, did in fact create an annuity charged on the statutory undertaking of the company, and was not intended to create and did not create a rent-charge arising out of such corporeal hereditaments (if any) as were comprised therein, and that such an annuity was personalty, and not realty.

IN RE BAXTER, MALLING *v.* ADDISON, 103 L. T.  
[427 ; 27 T. L. R. 28—Parker, J.]

**REPAIRS AND IMPROVEMENTS.**

See LANDLORD AND TENANT ; SETTLEMENTS,

**REPLEVIN.**

See DISTRESS.

**RES JUDICATA.**

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**RESTITUTION OF PROPERTY.**

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**RESTRAINT ON ANTICIPATION.**

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**RETAINER.**

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**REVENUE.****I. EXCISE.**

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## I. EXCISE.

## (a) Carriage Duty.

1. "*Carriage*"—*Exemption—Milk Cart Used for Non-exempted Purpose—User by Servant without Knowledge of Owner—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (3).*] The appellants were the owners and occupiers of, but did not reside on, a farm which was managed for them by a bailiff under the superintendence of a steward who resided some considerable distance away. Part of the business of the farm was the conveyance of milk to a railway station, and for this purpose the appellants had a four-wheeled van which was usually driven to and from the station by a milkman. The van had the appellants' names painted on the side and was constructed for use for the conveyance of milk churns in the course of the appellants' business as dairy farmers. On one occasion, without the knowledge of the appellants or of the steward and for his own purposes, the bailiff used the milk van, after conveying milk to the station, for bringing back his wife and others from a place of entertainment. In respect of this user the appellants were convicted of keeping and using the milk van without having a licence therefor.

HELD—that the conviction was right inasmuch as the milk van was kept by the appellants, and they were responsible for the user by the bailiff of the van on the day in question, such user not being for the conveyance of goods or burden in the course of trade or husbandry within sect. 4, sub-sect. 3 of the Customs and Inland Revenue Act, 1888.

STRETT v. CLIFT. [1911] 1 K. B. 1; [1910] [W. N. 212; 74 J. P. 471; 27 T. L. R. 14; 8 L. G. R. 989—Div. Ct.]

2. *Exemption—Constructed or Adapted for Use—Capable of Being Used—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (3).*]—A vehicle does not cease to be within the exemption in sect. 4, sub-sect. 3, of the Customs and Inland Revenue Act, 1888, as being "constructed and adapted for use and used solely for the conveyance of any goods or burden in the course of trade or husbandry," merely because it can be used for other purposes.

The mere fact that persons are driven in a

vehicle to market for the purpose of selling goods at such market, does not make the vehicle taxable, if otherwise exempt.

COOK v. HOBBS, [1911] 1 K. B. 14; [1910] [W. N. 219; 103 L. T. 566—Div. Ct.]

3. *Exemption—Constructed or Adapted for Use—Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 4 (3).*]—The respondent kept a vehicle of the description known as a dogcart with four wheels. It had seating accommodation for four persons, and was fitted with rubber tyres and smart lamps. It was used by him for the purpose of his business—a shoe manufacturer's agent—to carry his samples. The interior fittings had been removed, steel plates had been put on the bottom and on the springs to strengthen the vehicle, and the two back seats removed to take seven specially made cases to carry the samples.

HELD—that there was evidence on which the magistrate could find that the vehicle was adapted for use solely for the conveyance of goods within sect. 4 of the Customs and Inland Revenue Act, 1888.

COLLMAN v. STOKES, 103 L. T. 592; 74 J. P. [473—Div. Ct.]

## (b) Dealer in Plate.

4. *Hall-mark—Imported Enamelled and Jewelled Articles with Foundation of Gold or Silver—Customs Act, 1842 (5 & 6 Vict. c. 47), s. 59.*]—Articles inlaid with enamel or set with precious stones on a foundation of gold or silver imported into the United Kingdom are "plate" within the meaning of sect. 59 of the Customs Act, 1842, and must be assayed, stamped, and marked under that section before they are sold, exchanged, or exposed to sale in the United Kingdom.

*Goldsmiths' Co. v. Wyatt* ([1907] 1 K. B. 95) followed.

FABERGÉ v. GOLDSMITHS' CO., 103 L. T. 555— [Parker, J.]

## (c) Male Servants.

5. *Porter at Flats—"House Porter"—Customs and Inland Revenue Act, 1869 (32 & 33 Vict. c. 14), ss. 19, 27.*]—Two male servants were employed as porters at two blocks of flats. Their substantial duties were to work and clean the lifts, to clean the stairs, steps and backyards, to take up coal and bring down the dust-bins, to attend in the hall and open the doors, to call cabs and carriages, and to carry luggage.

HELD—that the persons employed were "house porters" within the meaning of sect. 19, and therefore "male servants" within the meaning of sect. 27, of the Customs and Inland Revenue Act, 1869, and that the appellant was bound to have a licence for them.

*Whiteley v. Burns* ([1908] 1 K. B. 705) explained.

MARCHANT v. LONDON COUNTY COUNCIL. [1910] 2 K. B. 379; 79 L. J. K. B. 718; 102 L. T. 917; 74 J. P. 339; 26 T. L. R. 500; 8 L. G. R. 694—Div. Ct.]

## I. Excise—Continued.

## (d) Publican's Licence Duty.

6. *Annual Value of Premises—Basis of Valuation—Metropolis—Valuation (Metropolis) Act, 1869* (32 & 33 Vict. c. 57) ss. 45, 47—*Finance (1909-10) Act, 1910* (10 Edw. 7, c. 8) s. 44 (1).—Sect. 44, sub-sect. 1, of the *Finance (1909-10) Act, 1910*, which declares that in the determination of the annual value for the purposes of the excise licence duty "the duty on the licence is not to be allowed as a deduction" has altered the method of calculation of annual value of licensed premises in the metropolis and the basis of valuation under the *Valuation (Metropolis) Act, 1869*, is no longer applicable.

WRIGGLESWORTH v. R., 130 L. T. Jo. 202—  
[Channell, J.]

## (e) Saccharin.

[No paragraphs in this vol. of the Digest.]

## (f) Spirit Dealers.

[No paragraphs in this vol. of the Digest.]

## (g) Tobacco.

[No paragraphs in this vol. of the Digest.]

## II. IN GENERAL.

7. *Duties Paid under Protest—Duties not Legally Exigible—Petition to Recover—Voluntary Payment.*—In *Whiteley v. Burns* ([1908] 1 K. B. 705; 77 L. J. K. B. 467; 98 L. T. 836; 72 J. P. 127; 24 T. L. R. 319; 52 Sol. Jo. 264—Div. Ct.) it was decided that certain duties were not exigible. The suppliants now claimed repayment of the duties paid by them during the years in respect of which they had protested that they were not liable.

HELD—that the case did not come within the class of cases dealing with money extorted or obtained *colore officii*, that the duties were paid voluntarily, and were not recoverable.

WHITELEY, LD. v. R., 101 L. T. 741; 26 T. L. R. 319—Walton, J.

8. *Practice—Costs against Crown.*—In revenue cases, except in special circumstances, costs are to be allowed against the Crown, if unsuccessful, as in ordinary cases between subject and subject.

EDINBURGH LIFE ASSURANCE CO. v. LORD [ADVOCATE, [1910] A. C. 153; [1910] S. C. (H. L.) 13—H. L. (Sc.).

## III. STAMP DUTIES.

See also DEPENDENCIES, No. 22.

## (a) Bond, Covenant, etc.

9. *Agreement to Supply Electric Current—Primary Security for Sum of Money at Stated Periods*—Stamp Act, 1891 (54 & 55 Vict. c. 39), Sched. I.—By an agreement in writing a company undertook to supply electric current to another company for seven years. The consumers were to pay a fixed charge per quarter, and in addition 1d. per Board of Trade unit, and

provision was made for the increase or decrease of the quarterly payments on the increase or decrease of the capacity of the supply company's installation.

HELD—that this instrument was within the words "bond, covenant, or instrument of any kind whatsoever, being the only or principal or primary security for a sum of money at stated periods for a definite and stated period" in Sched. I. of the Stamp Act, 1891, and therefore liable to duty at the rate of 2s. 6d. per cent. on the total amount of the minimum annual payments.

National Telephone Co. v. Inland Revenue Commissioners ([1900] A. C. 1) followed.

Decision of Channell, J. ([1909] 1 K. B. 737; 78 L. J. K. B. 374; 100 L. T. 613; 73 J. P. 237; 25 T. L. R. 348; 8 L. G. R. 313) affirmed.

COUNTY OF DURHAM ELECTRICAL POWER DISTRIBUTION CO., LD. v. INLAND REVENUE COMMISSIONERS, [1909] 2 K. B. 604; 78 L. J. K. B. 1158; 101 L. T. 51; 73 J. P. 425; 25 T. L. R. 672; 8 L. G. R. 1088—C. A.

## (b) Conveyance or Transfer on Sale.

[No paragraphs in this vol. of the Digest.]

## (c) Capital of Companies.

10. *Increase of Nominal Share Capital—Power of Shareholder to have Stock Converted into other Stock of Double Nominal Value*—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 113.—By the Caledonian Railway Company's private Act, 1890, a holder of the ordinary stock of that railway could require the company to convert the whole or any part of such stock and to issue to him an amount of preferred and deferred converted ordinary stock each equal to the amount of ordinary stock so converted. By the Caledonian Railway Act, 1898, the Act of 1890 was made to apply to all the ordinary stock of the company issued under any past or future Act of Parliament. By the Caledonian Railway Act, 1899, the company was authorised to raise £906,000 additional capital by the issue at their option of new ordinary shares or stock, or new preference shares or stock. The railway company delivered the statement required by sect. 113 of the Stamp Act, 1891, as to £906,000, but the Crown claimed that as this could, under the provisions of the company's private Acts, be converted into stock or shares of the nominal value of £1,812,000, the latter was the amount of nominal capital authorised, and that, consequently, stamp duty was payable on that amount.

HELD—that £1,812,000 was the increased amount of the nominal share capital authorised within the meaning of sect. 113 of the Stamp Act, 1891, and that stamp duty was payable on that basis.

ATTORNEY-GENERAL v. CALEDONIAN RY. CO., [102 L. T. 358; 26 T. L. R. 343—Bray, J.]

## (d) Highway Agreements.

[No paragraphs in this vol. of the Digest.]



III. Stamp Duties—*Continued.*

## (e) Insurance Policies.

**11. Marine Insurance—Open Cover—Verbal Agreement Referring Question of Underwriter's Liability—Stamp—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 91—93, 97.]**—The plaintiffs, having effected a reinsurance contract by way of open cover with the defendant, put forward a policy upon certain cargo in respect of which the plaintiffs had become liable to pay a loss on their original policy. The defendant having refused to sign the policy upon the ground that the plaintiffs had failed to make all the declarations that ought properly to have been made by them under their cover, it was verbally agreed between the parties that a person should be nominated to certify whether all the declarations had or had not been made by the plaintiffs, and if the person so nominated certified that all the declarations had been made by the plaintiffs, the defendant was to sign the policy and pay the loss. The person to whom the reference was made certified that all the declarations had been made, whereupon, as the defendant still refused to sign the policy, the plaintiffs sued him to recover damages for breach of the verbal agreement.

**HELD**—that the action failed inasmuch as it was brought upon a contract for sea insurance, which, as not being in writing, was invalid by reason of the provisions of the Stamp Act, 1891.

**GENFORSIKRINGS AKTIESELSKABET (SKANDINAVIA REINSURANCE CO. OF COPENHAGEN) v. DA COSTA**, [1911] 1 K. B. 137; 27 T. L. R. 43—Hamilton, J.

## (f) Marketable Security.

[No paragraphs in this vol. of the Digest.]

## (g) Mortgage.

[No paragraphs in this vol. of the Digest.]

## (h) Proprietary and Other Medicines.

**12. Medicine—Sale of "Blood Purifier"—Exemptions—Person who has "Served a Regular Apprenticeship"—No Agreement in Writing—Medicines Stamp Act, 1812 (52 Geo. 3, c. 150), s. 2, and Schedule.]**—An information was laid against the respondent for selling a medicinal preparation which did not bear a duly stamped paper cover, as required by sect. 2 of the Medicines Stamp Act, 1812. The respondent claimed to come within the special exemption conferred by that Act on any chemist or druggist "who hath served a regular apprenticeship." He had in fact served his father as an apprentice under an oral agreement.

**HELD**—that an oral agreement together with actual service did not constitute the respondent a person who had "served a regular apprenticeship" within the special exemption, and therefore that he was liable to the penalty provided by the Act.

**KIRKBY v. TAYLOR**, [1910] 1 K. B. 529; 79 L. J. K. B. 267; 102 L. T. 184; 74 J. P. 143; 26 T. L. R. 246—Div. Ct.

## (i) Receipt.

[No paragraphs in this vol. of the Digest.]

## (k) Settlement.

[No paragraphs in this vol. of the Digest.]

## (l) Miscellaneous.

**13. Deed of Separation—Weekly Payments.]**—A deed of separation containing a covenant for payment of a weekly sum should be stamped not only with the *ad valorem* duty of 2s. 6d. for each £5 of the weekly payments, but also with a 10s. stamp as a deed not otherwise charged.

**HULSE v. HULSE**, 54 Sol. Jo. 704—County Court.

**REVERSIONS AND REMAINDERS.**

*See* PERSONAL PROPERTY: REAL PROPERTY AND CHATTELS REAL.

**REVISING BARRISTER.**

*See* ELECTIONS.

**RIGHT OF WAY, etc.**

*See* EASEMENTS; HIGHWAYS.

**RIOT.**

*See* CRIMINAL LAW AND PROCEDURE.

**RIPARIAN OWNERS AND RIGHTS.**

*See* FISHERIES; WATERS AND WATERCOURSES.

**RIVERS.**

*See* WATERS AND WATERCOURSES.

**ROADS.**

*See* HIGHWAYS, STREETS, AND BRIDGES.

**ROBBERY.**

*See* CRIMINAL LAW AND PROCEDURE.

## ROYAL FORCES.

See also BANKERS AND BANKING, No. 2 ;  
INTOXICATING LIQUORS, No. 13 ;  
MASTER AND SERVANT, No. 19.

1. *Army Officer's Pension—Attachment—Paymaster-General's Pay Warrant—Negotiability—Army Act, 1881 (44 & 45 Vict. c. 58), s. 141.*—Sect. 141 of the Army Act, 1881, which renders void every charge on an army officer's pension, does not apply to money which has been collected as pension by the officer's bankers, but has lost its character of pension by being reduced into possession by such collection.

A form of receipt, signed by an officer for the amount of his pension due, having the words "This receipt must be presented for payment by a London banker, but may be negotiated in the country or abroad, and is to be left by the banker at the Paymaster-General's office one day for examination," is not a negotiable instrument.

JONES & Co. v. COVENTRY, [1909] 2 K. B. 1029 ;  
[79 L. J. K. B. 41 ; 101 L. T. 281 ; 25 T. L. R.  
736 ; 53 Sol. Jo. 734—Div. Ct.

See S. C. under BANKERS AND BANKING, I.

2. *Rateability—Premises Acquired by County Association for Purposes of Territorial Forces—Premises Occupied by Officer for Purposes of his Duties—Territorial and Reserve Forces Act, 1907 (7 Edw. 7, c. 9), ss. 1—4.*—Premises *bonâ fide* acquired by a county association under the Territorial and Reserve Forces Act, 1907, for the purposes of the Territorial Forces, are premises acquired by the Crown for Crown purposes, and as long as an officer, by arrangement with the county association, resides therein for the purpose of his duties under the Act of 1907, such premises are, as being used for Crown purposes, exempt from rating. Where, in such circumstances, the name of the officer in occupation of the premises has in fact been inserted in the rate-book, the objection that he is not liable to be rated may be taken before the justices on an application for a distress warrant.

WIXON v. THOMAS, LAMBERT v. SAME, BURLROWS v. SAME, [1911] 1 K. B. 43 ; 27 T. L. R. 35 ; 8 L. G. R. 1042—Div. Ct.

## SALE OF GOODS AND PERSONAL PROPERTY.

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See also BILLS OF SALE, No. 1 ;  
MISREPRESENTATION, No. 1.

### I. ACCEPTANCE.

1. *Implied Condition—"Merchantable Quality"—Form of Contract—"Delicery as Required"—Power to Sever—Acceptance of First Consignment—Part of Later Consignment Defective—Right to Return Whole Consignment—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 14.*—The defendants, who were dealers in motor accessories, ordered a large number of motor horns of the plaintiff, who manufactured them, the order providing for "delivery as required." They were delivered by carriers nominated by the defendants in nineteen cases during May and June, 1909, and in the latter month the defendants inspected them and rejected all, except the first instalment, on the ground that a great proportion of the horns were unsaleable on account of being dented and of faulty manufacture. An action to recover the price of the goods was referred to an official referee, who found that many of the horns had sustained injury owing to insufficient packing ; that some were defective through careless work ; and that some required polishing and other work to make them merchantable ; but as the injured or defective horns could have been made merchantable at a very slight cost, he declined to find that the goods as an entire consignment were unmerchantable, and, subject to an allowance in respect of the injuries and defects above mentioned, he gave judgment for the plaintiff with costs.

**HELD**—that the terms of the order showed that it was contemplated that the goods should not all be delivered at one time, but from time to time, and that, therefore, the acceptance of a prior instalment was not a bar to the rejection of the remainder ; that, subject to the rule *de minimis*, the vendor must prove that he had delivered or tendered all the goods in a merchantable condition ; and that, although a large proportion of the goods in dispute were in a merchantable condition, the defendants had a right to reject the whole of them.

*Tarling v. O'Riordan* (1878) 2 L. R. Ir. 82 approved.

Decision of Div. Ct. reversed.

JACKSON v. ROTAX MOTOR AND CYCLE CO., [1910] 2 K. B. 937 ; 80 L. J. K. B. 38 ; 103 T. T. 411—C. A.

**I. Acceptance—Continued.**

**2. Condition—Right of Rejection—Act Inconsistent with Ownership of Seller—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 35.]**—A firm of engineers contracted to supply two feed tanks to a firm of shipbuilders for a tug which the latter were building for the Admiralty. It was a condition of the contract that the tanks were to be made "to British Admiralty latest tests and requirements." Owing to some misunderstanding between the parties the tanks were delivered to the shipbuilders without having been tested by the Admiralty inspector. The shipbuilders, assuming that this had been done, built them into the vessel without further inquiry, and closed up the engines. A week later the tanks were inspected by the Admiralty officer, and rejected.

**HELD**—that as the shipbuilders had built the tanks into the vessel without ascertaining, as they might have done, whether the contract condition had been complied with, they were barred from rejecting them, and that accordingly they were liable for the price.

**MECHAN & SONS, LD. v. BOW, McLACHLAN & Co., LD., 47 Sc. L. R. 650—Ct. of Sess.**

**II. CONDITIONS.**

*See also I., supra.*

**3. Implied Condition—Motor Omnibuses—Fitness for Particular Purpose—Patent or Trade Name—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 14 (1).]**—The plaintiffs ordered from the defendants six 20 to 40-h p. "Fiat" motor omnibus chassis. The defendants were told that the omnibuses were required for heavy passenger traffic at Bristol.

**HELD**—that such a statement of purpose was sufficient to show that the plaintiffs relied upon the defendants' skill or judgment; that on the evidence there was ample evidence to show that the plaintiffs did in fact rely upon the defendants' skill or judgment; that there was an implied condition that the omnibuses should be reasonably fit for the declared purpose; and that the defendants were not entitled to rely upon the proviso to sect. 14, sub-sect. 1, of the Sale of Goods Act, 1893, as the contract was not for the sale of the omnibuses under a patent or trade name.

**Decision of Lawrance, J., affirmed.**

**BRISTOL TRAMWAYS AND CARRIAGE CO. v. [FIAT MOTORS, LD., [1910] 2 K. B. 831; 79 L. J. K. B. 1107; 103 L. T. 443; 26 T. L. R. 629—C. A.]**

**III. CONSTRUCTION.**

*See No. 1, supra.*

**IV. DAMAGES.**

[No paragraphs in this vol. of the Digest.]

**V. FORMATION OF CONTRACT.**

**4. Goods Exceeding £10 in Value—Hawthorne—Constructive Delivery and Receipt—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 4.]**—The

plaintiff agreed to buy from the defendant, a farmer, a standing hayrick for £100. The plaintiff was to send his men to tie and press the hay, and the defendant was to cart it to the nearest railway station. Before the plaintiff had sent to cut the hay, the defendant sent him a telegram saying "Don't send press. Am writing," and a letter asking him to give up possession of the hay. The plaintiff declined to do so, and the defendant refused to let the plaintiff have the hay.

**HELD**—that the contract was one to which the principle of constructive delivery and receipt was applicable, and that the telegram and letter of the defendant constituted evidence of such constructive delivery and receipt, and the plaintiff accordingly was entitled to damages for breach of contract.

**NICHOLLS v. WHITE, 130 L. T. Jo. 128—Div. Ct.**

**VI. MISCELLANEOUS.**

**5. Unpaid Seller's Right of Lien—Unascertained Goods—Acceptance of Delivery Orders—Assent to Sub-sale—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 47.]**—In the case of unascertained goods, the mere assent by the unpaid seller to the fact of a sale or other disposition thereof by the buyer does not deprive such unpaid seller of his right of lien under sect. 47 of the Sale of Goods Act, 1893. The assent contemplated by that section, which will have the effect of excluding such right of lien in the case of unascertained goods, must be given under circumstances which show that the unpaid seller assented to the sub-purchaser being entitled to get delivery of the goods free from any lien under the original contract.

**MORDAUNT BROTHERS v. BRITISH OIL AND [CAKE MILLS, LD., [1910] 2 K. B. 502; 54 Sol. Jo. 654; 15 Com. Cas. 285—Pickford, J.]**

*See S. C., No. 7, infra.*

**6. Unpaid Seller's Right of Lien—Assent to Sub-sale—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 29, 41, 47.]**—The plaintiffs, through one T., who was acting for them in the matter, bought three old boilers which belonged to and were in the possession of a paper company. While the boilers still remained on the premises of the paper company T. sold them to H. for £60, on the terms that £20 should be paid before the removal of the first boiler, and the balance of £40 by December, 1909; and in October, 1909, T., by letter, informed the paper company of the sale to H. Subsequently H. sold the boilers, which still physically were in the paper company's possession, to the defendants and paid £10 on account to T., but paid no more. There was no acknowledgment by the paper company to H. that they held the boilers on his behalf.

**HELD**—that the plaintiffs were not precluded from setting up their right of lien as unpaid sellers by the fact that they had through T. informed the paper company of the sale to H.

**POULTON & SON v. ANGLO-AMERICAN OIL [CO., LD., 27 T. L. R. 38—Channell, J.]**

## VI. Miscellaneous—Continued.

7. *Course of Business—Delivery Orders—Estoppel—Lien—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 47.]—A firm called Crichton Brothers were in the habit of purchasing oil from the defendants, and in the case of several purchases they had brought a delivery order to the plaintiffs in the following form:—"Messrs. The British Oil and Cake Mills, Ltd. Please deliver to Messrs. Mordaunt Brothers or order two tons boiled linseed oil in pipes *ex* our contract. (Signed), Crichton Brothers." On receipt of delivery order the plaintiffs would advance to Crichton Brothers an amount equal to about 90 per cent. of the value of the oil mentioned in the order. The plaintiffs would then indorse the order, "Please wait our orders," or "Please deliver as per instructions herewith," and send the order thus indorsed to the defendants, who in some cases notified the plaintiffs that it was in order, and in others omitted to communicate with them; but in all cases they entered the plaintiffs' name in their books as the persons to whom or to whose order the oil was to be delivered. On receipt of the advance Crichton Brothers would direct the plaintiffs to sell the oil at once or wait till it reached a higher price.

HELD—that as upon the evidence the plaintiffs in practically every instance had advanced money to Crichton Brothers before hearing from the defendants whether the delivery orders were in order or not, they had failed to establish a case of estoppel, and the defendants were entitled to exercise their lien and demand cash against delivery.

MORDAUNT BROTHERS *v.* BRITISH OIL AND [CAKE MILLS, LD., [1910] 2 K. B. 502; 79 L. J. K. B. 967; 103 L. T. 217; 54 Sol. Jo. 654; 15 Com. Cas. 285—Pickford, J.

## VII. NOTE OR MEMORANDUM.

8. *Contract not to be Performed within a Year—Necessity for Memorandum or Note in Writing—Statute of Frauds* (29 Car. 2, c. 3), s. 4.]—Sect. 4 of the Statute of Frauds applies to a contract for the sale of goods which is not to be performed within the space of one year from the making thereof. Such a contract is therefore unenforceable unless there is some memorandum or note thereof in writing signed by the party to be charged therewith, or by some person authorised by him.

PRESTED MINERS GAS INDICATING ELECTRIC [LAMP CO., LD. *v.* HENRY GARNER, LD., [1910] 2 K. B. 776; 79 L. J. K. B. 1143; 103 L. T. 223; 26 T. L. R. 644; 54 Sol. Jo. 750—Walton, J.

## VIII. PART PAYMENT.

(No paragraphs in this vol. of the Digest.)

## IX. PASSING OF PROPERTY IN GOODS.

9. *Sale or Return—Pledge of Goods—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), ss. 18, 25.]—On October 12th, 1909, the plaintiffs delivered to one M. a necklace on sale or return; but it was the intention of both parties to that transaction that the property should not pass except on

payment of cash by M. on or before October 18th. On October 13th M. pledged the necklace with the defendant. In an action by the plaintiffs to recover the necklace from the defendant:—

HELD—that the property in the necklace did not pass under sect. 18, rule 4, of the Sale of Goods Act, 1893, when M. pledged it to the defendant, and that therefore the plaintiff was entitled to recover.

*Per* Cozens-Hardy, M.R.—A person who obtains goods "on sale or return" is not in possession of the goods under an agreement to buy them within the meaning of sect. 25 of the Sale of Goods Act, 1893.

Decision of Hamilton, J. (26 T. L. R. 349), affirmed.

PERCY EDWARDS, LD. *v.* VAUGHAN, 26 T. L. R. [545—C. A.]

10. *Fraudulent Misrepresentation by Buyer—Bankruptcy of Buyer—Recovery of Property—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 43, 44.]—Where a contract for the sale of goods is induced by fraudulent misrepresentations on the part of the buyer, the seller may disaffirm the contract and retake possession of the property after a receiving order has been made against the buyer.

TILLEY *v.* BOWMAN, LD., [1910] 1 K. B. 745; [79 L. J. K. B. 547; 102 L. T. 318; 54 Sol. Jo. 342; 17 Manson, 97—Hamilton, J.]

11. *Goods Delivered on Approval—Fraud—Voidable Title—Pledge—Estoppel.*]—The plaintiffs, on November 18th, 1909, handed a pearl necklace to one B. on his representation that he could find a purchaser for it, on the terms of an approval which stated that it remained the property of the plaintiffs until invoiced by them. At the same time B. was told by the plaintiffs that the necklace would only be sold for cash. On December 17th, 1909, B. fraudulently stated to the plaintiffs that he had a customer who would buy the necklace if the plaintiffs would allow him to pay for it by bills. The plaintiffs agreed, and on the following day B. told them that he had sold the necklace and he gave bills for the amount. Thereupon the plaintiffs invoiced the necklace to him. In February, 1910, the plaintiffs ascertained that B. had pawned the necklace with the defendant on November 18th for £400; and that in January, 1910, B. had pledged other articles with the defendant under deposit notes which gave the defendant a charge not only on the articles then deposited but also on all other securities held by the defendant. Throughout the pledges were taken by the defendant in good faith.

HELD—that the plaintiffs were not estopped from denying the defendants' title in the necklace; that although the property in the necklace passed to B. on December 18th, 1909, when it was invoiced to him, the transaction was voidable inasmuch as the plaintiffs were induced to pass the property to him by his fraudulent representations; and that the defendant got no charge on the necklace for the £400 advanced on November 18th, but that, as she had made further advances in good faith to B. after



**IX. Passing of Property in Goods—Continued.**

December 18th, 1909, and before the plaintiffs avoided the transaction with him, she was entitled to a charge on the necklace in respect of those further advances.

**W. TRUMAN, LD. v. ATTENBOROUGH**, 103 L. T. [218; 26 T. L. R. 601; 54 Sol. Jo. 682—Walton, J.]

**12. C.I.F. Contract—"Terms Net Cash"—**  
*Payment—Tender of Shipping Documents—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 28, 32, 34.*—Where goods are sold under a c.i.f. contract, "terms net cash," the buyer is bound to pay the price of the goods on tender to him of the shipping documents, notwithstanding that at the date of such tender the goods have not arrived.

**RIDDELL BROTHERS v. E. CLEMENS HORST** [Co., [1910] W. N. 238; 27 T. L. R. 47; 55 Sol. Jo. 47—Hamilton, J.]

**X. PASSING OF TITLE TO GOODS.**

[No paragraphs in this vol. of the Digest.]

**XI. SALE OF BUSINESS.**

[No paragraphs in this vol. of the Digest.]

**XII. SALE BY SAMPLE.**

[No paragraphs in this vol. of the Digest.]

**XIII. STOPPAGE IN TRANSITU.**

[No paragraphs in this vol. of the Digest.]

**XIV. WARRANTY.**

See also Nos. 1, 3, *supra*.

**13. Sale of Seed—Goods Not According to Contract—Conditions of Sale—Non-warranty Clause in Sold Note.**—The claimants bought from the respondents a quantity of seed by sample which was represented to be common English sainfoin, and the respondents thereupon handed to the claimants a sold note in the following terms:—"Sold to [the claimants] on the conditions printed on the back, ab. 27½ quarters sainfoin 40s. x Walker (common English) x Alvescot. . . ." On the back was the following condition printed:—"Sellers give no warranty express or implied as to growth, description, or any other matters, and they shall not be held to guarantee or warrant the fitness for any particular purpose of any grain, seed, flour, cake, or any other article sold by them, or its freedom from injurious quality or from latent defect." The seed was delivered in due course, and was equal to sample. A portion of the seed was resold by the claimants as common English sainfoin. Neither the sample nor the bulk was common English sainfoin, but was giant sainfoin, the two seeds being indistinguishable. When the difference was subsequently discovered by the claimants' purchaser he claimed damages from them for breach of warranty, which claim was reasonably and properly settled by the claimants, after notice to the respondents, for £14. The claimants thereupon claimed to recover this sum from the respondents.

**HELD** (Moulton, L.J., dissenting)—that they were not entitled to recover, inasmuch as having

not only accepted the seed, but, by selling it, put it out of their power to return it, they could no longer treat the descriptive statement "common English sainfoin" as a condition, but could treat it only as a breach of warranty, and that their remedy in respect of such breach was barred by the clause on the back of the sold note.

*Howcroft v. Laycock* ((1898) 14 T. L. R. 460) overruled.

Decision of **Bray, J.** (102 L. T. 108; 26 T. L. R. 253) reversed.

**WALLIS, SON, AND WELLS v. PRATT AND [HAINES]**, [1910] 2 K. B. 1003; 79 L. J. K. B. 1013; 103 L. T. 118; 26 T. L. R. 572—C. A.

**SALE OF LAND.**

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See also **BANKRUPTCY**, No. 34; **COMPULSORY PURCHASE**; **ESTOPPEL**, No. 1; **EXECUTORS**, No. 20; **HUSBAND AND WIFE**, No. 5; **LOCAL GOVERNMENT**, No. 12; **MORTGAGE**; **REAL PROPERTY**, Nos. 6, 7; **SETTLEMENTS**, VIII. (c); **SPECIFIC PERFORMANCE**, No. 1; **TRUSTS**; **WILLS**, No. 21.

**I. ABSTRACT OF TITLE.**

[No paragraphs in this vol. of the Digest.]

**II. BUILDING ESTATE.**

**1. Restrictive Conditions—No Building Scheme—Effect of Registration of Restrictive Covenants—Land Transfer Acts, 1875 (38 & 39 Vict. c. 87), s. 84, and 1897 (60 & 61 Vict. c. 65), Sched. I.**—Where there is no building scheme in fact in respect of land, the entry on the register of restrictive conditions affecting such land under sect. 84 of the Land Transfer Act, 1875, as amended by Sched. I. to the Land Transfer Act, 1897, does not have the effect of creating a building scheme so as to entitle the purchaser of

## II. Building Estate—*Continued.*

one plot of the land to enforce those restrictive conditions against the purchasers of other plots.

Decision of Warrington, J. ([1910] 1 Ch. 84; 101 L. T. 558; 26 T. L. R. 87; 54 Sol. Jo. 65) affirmed.

WILLÉ v. ST. JOHN, [1910] 1 Ch. 325; 79 [L. J. Ch. 239; 102 L. T. 383; 26 T. L. R. 405; 54 Sol. Jo. 269—C. A.

## III. CONDITIONS AND PARTICULARS OF SALE.

2. "*Outgoings*"—*Payable by Vendor—Poor Rate—Municipal Rate—Apportionment—Collection of Rates (Dublin) Act, 1849* (12 & 13 Vict. c. 91), ss. 51, 52, 94.]—The conditions of sale of property in the city of Dublin, sold by order of the Court, provided that all outgoings were to be paid by the vendor down to August 1st, 1909 (the date fixed for the payment of the purchase-money).

HELD—(1) that the poor rate was not apportionable, and that the vendor was liable to pay the entire rate struck for the year, from April 1st, 1909, to March 31st, 1910, although same was collectable in two instalments, on May 5th and October 5th, 1909; (2) that having regard to the provisions of the Collection of Rates (Dublin) Act, 1849, the municipal rates, which were payable by instalments on May 5th and October 5th, 1909, were apportionable.

BELFAST BANK v. CALLAN, [1910] 1 I. R. 38 [—Meredith, M.R., Ireland.

## IV. CONTRACT.

[No paragraphs in this vol. of the Digest.]

## V. CONVEYANCE.

See VIII., *infra*.

## VI. LEASEHOLDS.

See TRUSTS, No. 12.

## VII. MISCELLANEOUS.

3. *Failure to Complete—Forfeiture of Deposit—Indemnity on Resale—Deposit taken into Account—Form of Order.*]—The defendant agreed to purchase certain property and paid a deposit, but failed to complete. Consequently by the terms of the contract the deposit was forfeited, and the vendor was at liberty to resell, making the defendant liable for any adverse difference in price.

HELD—that the deposit must be taken into account in calculating any deficiency in price on a resale.

Observations on the form of order in *Griffiths v. Vezey* ([1906] 1 Ch. 796).

SHUTTLEWORTH v. CLEWS, [1910] 1 Ch. 176; [79 L. J. Ch. 121; 101 L. T. 708—Joyce, J.

4. "*Purchase Money*"—*Bonus Payable to the Vendor by a Third Party—Irish Land Act, 1903* (3 Edw. 7, c. 37), s. 48.]—"Purchase money" is the money which a purchaser pays to the vendor for the estate which he is buying, and does not include money paid by a third

party to the vendor in order to induce him to sell to the purchaser at a certain price. Therefore the percentage or bonus payable out of the Irish Land Purchase Fund under sect. 48 of the Irish Land Act, 1903, in certain cases, to a vendor of land in Ireland does not form part of "the purchase money" of that land in the ordinary sense of that term.

IN RE OLIVER. RAMSDEN v. RAMSDEN, 103 [L. T. 422; 55 Sol. Jo. 12—Warrington, J.

## VIII. PARCELS.

### 5. Plan—*Right of Purchaser in Simple Cases.*]

—In all simple cases, where a plan will assist the description, the purchaser is entitled to a plan upon the conveyance as part of the rule that he is entitled to take the conveyance in his own form.

In re Sparrow and James's Contract (*infra*) commented upon.

IN RE SANSOM AND NARBETH'S CONTRACT, [1910] 1 Ch. 741; 79 L. J. Ch. 374, 491; 102 L. T. 677; 54 Sol. Jo. 475—Eady, J.

6. *Plan—Description Insufficient Without Plan—Words Qualifying Reference to Plan.*]—Where a draft conveyance contains a reference to a plan, which is a copy of a plan attached to the particulars and conditions of sale, and is as far as known materially accurate, and where the description of the property is without the plan insufficient or unsatisfactory, the vendor is not entitled to qualify the reference to the plan by adding the words "by way of elucidation and not of warranty."

IN RE SPARROW AND JAMES'S CONTRACT (1902), [1910] 2 Ch. 60; 79 L. J. Ch. 491, n.—Farwell, J.

7. *Sale by Plan—Concluded Contract—Evidence—Scottish Law.*]—All that passed, either oral or in writing, in the negotiations leading up to a completed contract of sale of heritable property is admissible in evidence to prove what was the subject of the sale, not to alter the contract, but to identify the subject.

The meaning of a descriptive name in a particular contract cannot be determined by a fixed rule of law without regard to the facts of the case.

HELD—on the evidence, that an estate was sold according to plan, and that the purchaser could not obtain a larger estate than that shown on the plan, on the ground that particulars given and taken as being particulars of what was contained in the plan were inconsistent with the plan.

GORDON-CUMMING v. HOULDSWORTH, [1910] [A. C. 537; 80 L. J. P. C. 47; 47 Sc. L. R. 761—H. L. (Sc.).

## IX. PARTIES.

[No paragraphs in this vol. of the Digest.]

## X. PRACTICE.

See also SOLICITORS, No. 12.

8. *Doubtful Title—Question of Construction—Vendor and Purchaser Summons—Originating*

**X. Practice—Continued.**

*Summons—Costs.*—The purchaser of freehold ground rents objected to the title, which depended on a difficult question on the construction of a will. The vendors then took out a summons under the Vendor and Purchaser Act, 1874, claiming that on the construction of the will they had shown a good title. Neville, J., suggested that the vendors ought to take out an originating summons to have the question of construction determined, and, on their refusal to do so, he held that the title was too doubtful to force upon the purchaser. The Court of Appeal having made the same suggestion, the vendors took out an originating summons to have the question of construction determined, and it was decided in their favour. The Court then directed that the declaration made on the originating summons should be read into the order, and discharged the order of Neville, J., and declared that the vendors had shown a good title, but, as the procedure adopted by the vendors was incorrect, they were ordered to pay the costs of the appeal and in the Court below.

IN RE NICHOLS AND VAN JOEL'S CONTRACT,  
[1910] 1 Ch. 43; 79 L. J. Ch. 32; 101 L. T.  
839—C. A.

**XI. RESTRICTIVE COVENANTS.**

[No paragraphs in this vol. of the Digest.]

**XII. TITLE.**

*See also* No. 8, *supra*.

9. *Equitable Title—Right to Call for Legal Estate—Insufficiency of Abstract—Repudiation of Contract by Purchaser—Return of Deposit.*

—Where a vendor has no title at the date of the contract and has no power to clothe himself with a good title, the purchaser may repudiate the contract and need not give time. But where the vendor can make a good title and his only default is in not satisfying the purchaser that he has a right to convey, the purchaser is not entitled to repudiate the contract and to call for a return of the deposit.

IN RE HUCKLESBY AND ATKINSON'S CONTRACT,  
[102 L. T. 214; 54 Sol. Jo. 312—Eve, J.]

**XIII. TITLE DEEDS.**

[No paragraphs in this vol. of the Digest.]

**SALFORD HUNDRED COURT.**

*See* COURTS.

**SALMON.**

*See* FISHERIES.

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*See* ADMIRALTY; SHIPPING AND NAVIGATION.

**SAMPLES.**

*See* FOOD AND DRUGS; SALE OF GOODS.

**SANITATION.**

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**SATISFACTION AND DISCHARGE.**

*See* CONTRACT; JUDGMENT.

**SATISFACTION IN EQUITY.**

*See* WILLS.

**SAVINGS BANKS.**

*See* BANKS AND BANKING.

**SCHOOLS AND SCHOOLMASTERS.**

*See* CHARITIES; EDUCATION.

**SCIENTER.**

*See* ANIMALS.

**SCIENTIFIC AND LITERARY SOCIETIES.**

[No paragraphs in this vol. of the Digest.]

**SCOTTISH LAW.**

*See also* SALE OF LAND, No. 7; SETTLEMENTS, No. 14.

1. *Road—Right of Way—Prescriptive Public Use—Deviation and Substitution.*—Circum-

**Scottish Law—Continued.**

stances in which it was held that, for the purpose of establishing by prescriptive use a public right of way from one highway in Scotland to another, which use did not extend to the full prescriptive period, it was right to take into consideration the earlier use of a way between the two highways, although such way began and finished at different points and followed throughout a different line.

YOUNG v. KINLOCH, 47 Sc. L. R. 356; [1910]  
[A. C. 169—H. L. (Sc.).]

2. *Heritable Office—Hereditary Standard Bearer of Scotland—Nature of Office.*—The office or dignity of Royal Standard Bearer of Scotland was granted *jure sanguinis*, and therefore, as there had been no failure of heirs who could have exercised the right, the alleged vesting of the office by an apprisement in the predecessor of the respondent in 1670 was inoperative, because the office was neither feudal nor made alienable, nor put *in commercio* by any Act of Parliament.

Decision of Ct. of Sess. ([1908] S. C. 1237; 45 Sc. L. R. 949) reversed.

SCRYMGEOUR WEDDERBURN v. EARL OF  
[LAUDERDALE, [1910] A. C. 342; 26 T. L. R.  
389; 54 Sol. Jo. 441; 47 Sc. L. R. 532—  
H. L. (Sc.).]

3. *Lease—Outgoing—Arbitration—Valuation of Sheep Stock—Reference in Lease—Reference in Statute—Agricultural Holdings (Scotland) Act, 1908 (8 Edw. 7, c. 64), s. 11 (1).*—The Agricultural Holdings (Scotland) Act, 1908, s. 11, sub-s. (1), enacts, "All questions which under this Act or under the lease are referred to arbitration shall . . . be determined, notwithstanding any agreement under the lease or otherwise providing for a different method of arbitration, by a single arbiter in accordance with the provisions set out in the Second Schedule to this Act."

A lease of a sheep farm provided that at the expiry of the lease "the tenant shall leave the sheep stock on the farm to the proprietors or incoming tenant according to the valuation of men mutually chosen, with power to name an oversman."

HELD—that, in Scottish law, these words were a reference to arbitration to which the Act applied, and that a single arbiter fell to be appointed.

Decision of Ct. of Sess. ([1909] S. C. 1254; 46 Sc. L. R. 918) affirmed.

STEWART v. WILLIAMSON, [1910] A. C. 455;  
[80 L. J. P. C. 29; 102 L. T. 551; 47 Sc.  
L. R. 536—H. L. (Sc.).]

**SEA AND SEASHORE.**

See WATERS AND WATERCOURSES.

**SEAMEN.**

See MASTER AND SERVANT; SHIPPING  
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**SECRET COMMISSIONS.**

See AGENCY; COMPANIES; SOLICITORS;  
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**SECURITY FOR COSTS.**

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**SEPARATE PROPERTY OF  
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See HUSBAND AND WIFE.

**SEPARATION, JUDICIAL.**

See HUSBAND AND WIFE.

**SEQUESTRATION.**

See CONTEMPT; PRACTICE AND PRO-  
CEDURE.

**SET-OFF AND COUNTER-  
CLAIM.**

See also ACTION; ADMIRALTY;  
BANKERS; BANKRUPTCY, No. 37;  
INSURANCE, No. 15; MASTER AND  
SERVANT, No. 70; PRACTICE,  
No. 37.

1. *Debt Due from Plaintiff to Third Person Assigned to Defendants—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (6).*—In an action by A. against B. to recover a sum due, B. may set off a debt originally due from A. to C. which has been absolutely assigned by C. to B. with express notice in writing to A.

Read v. Brown ((1888) 22 Q. B. D. 128) considered and applied.

Decision of Div. Ct. ([1910] 2 K. B. 1; 79 L. J. K. B. 702; 102 L. T. 679) reversed.

BENNETT v. WHITE, [1910] 2 K. B. 643; 79  
[L. J. K. B. 1133; 103 L. T. 52—C. A.]

2. *Discontinuance of Action Before Appearance—“Setting up” Counter-claim—R. S. C., Order 21, r. 16, Order 26, r. 1.*—On November 2nd, 1909, a collision occurred between the



**Set-off and Counterclaim—Continued.**

French steamer *Boucau* and the British steamer *Salybia* outside Cardiff, and the *Boucau* was sunk. On the same day the owners of the *Boucau* issued a writ *in rem* out of the Cardiff registry to recover damages and the *Salybia* was arrested. On November 3rd the plaintiffs' solicitors filed a *præcipe* praying a release of the *Salybia*, "the action having been withdrawn by us before an appearance was entered." The *Salybia* was accordingly released. Later on the same day, in reply to a telegram from the defendants' solicitors saying they undertook to appear and put in bail, the plaintiffs' solicitors intimated that the action was not being proceeded with, and that the *Salybia* had been released. On November 4th the defendants' solicitors wrote that they had a counter-claim for the damages sustained by the *Salybia*, and asking for the writ to be sent so that they might enter an appearance; and on November 5th they entered an appearance in London and sent *præcipe* thereof to the London agents of the plaintiffs' solicitors, who, however, returned it on the ground that they had no authority to act "in the discontinued action."

**HELD**—that no counter-claim had been "set up" within the meaning of Order 21, r. 16, so as to entitle the defendants to have it proceeded with notwithstanding the discontinuance of the action.

*Bildt v. Foy* ((1892) 9 T. L. R. 34) distinguished.

THE SALYBIA, [1910] P. 25; 79 L. J. P. 31; 101 [L. T. 959; 26 T. L. R. 170; 11 Asp. M. C. 361—Bigham, Pres.

## SETTLEMENT AND REMOVAL.

See POOR LAW.

## SETTLEMENTS.

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### I. GENERAL.

1. *Rule Against Double Possibilities—Equitable Estate.*—The rule against the limitation of land to an unborn child with remainder to the latter's unborn child is not limited in its application to legal limitations; it applies also to cases where the limitations are of equitable interests and the legal estate is in trustees.

Decision of *Eve, J.* ([1909] 2 Ch. 450; 78 L. J. Ch. 657; 101 L. T. 153; 25 T. L. R. 688; 53 Sol. Jo. 651), affirmed.

IN RE NASH, *COOK v. FREDERICK*, [1910] 1 Ch. [1; 79 L. J. Ch. 1; 101 L. T. 837; 26 T. L. R. 57; 54 Sol. Jo. 48—C. A.

2. *Portions for "Younger Children"—Appointment to Younger Child who becomes the Eldest—Rule as to Double Portions.*—By a family settlement dated July 21st, 1888, power was given to B. to appoint portions to her younger named children. By deed poll dated June 3rd, 1890, B. appointed £3,000 to a younger son, G., and directed that £1,500 should be paid to him forthwith and the balance on her death. Before the death of B. the eldest son died. On B.'s death G. became tenant for life under the settlement.

**HELD**—that the fact of G. having become tenant for life under the settlement did not prevent his taking the £1,500 payable on B.'s death.

IN RE BANKES, *ALISON v. BANKES*, 101 L. T. [778—Joyce, J

## II. CAPITAL MONEYS.

See also RENT-CHARGES, No. 1.

### (a) Improvements.

#### (i.) *In General.*

[No paragraphs in this vol. of the Digest.]

#### (i.) "*Additions and Alterations Reasonably Necessary.*"

[No paragraphs in this vol. of the Digest.]

#### (iii.) *Re-building Mansion House.*

[No paragraphs in this vol. of the Digest.]

### (b) Investment.

3. *Purchase of Railway Stock — Dividends Earned Before but Paid After Purchase—Capital or Income.*—Trustees for the purposes of the Settled Land Acts invested certain capital moneys in railway stocks. At the date of the purchase, dividends on those stocks had been earned and ascertained, but payment of them was only made subsequently. As between the vendors and purchasers of the stocks the right to the dividends belonged in those circumstances to the latter.

HELD—that the dividends were capital and not income, and therefore that the tenant for life was not entitled to them.

IN RE SIR ROBERT PEEL'S SETTLED ESTATES, [1910] 1 Ch. 389; 79 L. J. Ch. 233; 102 L. T. 67; 26 T. L. R. 227; 54 Sol. Jo. 214—Warrington, J.

## III. COMPOUND SETTLEMENTS.

[No paragraphs in this vol. of the Digest.]

## IV. CONSTRUCTION AND OPERATION.

See also No. 13, *infra*.

### (a) General.

4. *Exclusion of Son Becoming Entitled to an Estate under a Will—Misdescription of Estate—Clerical Error.*—A settlement excluded from all benefits in the funds thereby settled any son becoming entitled to an estate "in tail male" under a will, whereas the only estate to which such son could have become entitled, under the will, was an estate in tail general. A son having become entitled to the estate in tail general, it was contended that as he had not taken an estate in tail male, he ought not to be excluded from sharing in the settled funds.

HELD—that the words "in tail male" were a clerical error, and that the son was excluded from sharing in the settled funds.

IN RE ALEXANDER'S SETTLEMENT, JENNINGS v. [ALEXANDER, [1910] 2 Ch. 225; 79 L. J. Ch. 656; 102 L. T. 909; 54 Sol. Jo. 602—Parker, J.

5. *Annuity—Charge of Annuity on Income or Corpus—Direction to Pay Annuity out of Income—Gift over "Subject Thereto."*—Where a settlement contained a trust for the payment of an annuity out of income, followed by a gift over of the corpus of the settled property "subject thereto,"

HELD—that the annuity was charged on the corpus of the settled property.

*In re Bigge* ([1907] 1 Ch. 714) overruled.

IN RE WATKINS'S SETTLEMENT, WILLS v. [SPENCE, [1911] 1 Ch. 1; [1910] W. N. 232; 55 Sol. Jo. 63—C. A.

### (b) Estate Clause.

[No paragraphs in this vol. of the Digest.]

### (c) Words of Limitation.

See also PERPETUITIES, No. 4.

6. *Marriage Settlement—Limitations—Subsequent Limitation to the First and Other Sons of a Collateral and the Heirs male of their Respective Bodies in Tail Male—Several Sons—Effect of Limitation.*—By a marriage settlement lands were limited to the use of the first son of the settlor and the heirs of the body of such first son, and, in default of such issue, to the use of the second, third, and every other son of the settlor, and the heirs of his and their body and bodies, severally and successively, and in remainder one after the other, and, in default of such issue, to the use of the daughters of the settlor as tenants in common and the several and respective heirs of their bodies. In default of such issue of the settlor, the lands were limited to collaterals, and after limitations to the elder and second brothers of the settlor and their issue male, in trust for his third brother for life with remainder "to his first and other sons, and the heirs male of their respective bodies in tail male." The last limitation took effect. The third brother left several sons. On a question arising as to whether, on the true construction of the limitation, the sons did not all take estates in tail male as joint tenants or tenants in common:—

HELD—that the eldest son took an estate in tail male to the exclusion of his younger brothers.

IN RE CLOSE'S ESTATE, [1910] 1 I. R. 357—[Wylie, J., Ireland.]

## V. FORFEITURE.

7. *Gift of Income—Until Event Depriving Beneficiary of Same—Divorce—Order of Divorce Court Extinguishing Interest.*—Under a marriage settlement a husband had a life interest until some event happened which would deprive him of the right to receive the same or any part thereof. He was divorced, and by an order of the Court his life estate was extinguished until his youngest child attained twenty-one.

HELD—that the order operated as a forfeiture.

IN RE CAREW'S SETTLEMENT, GELLIBRAND v. [CAREW, 55 Sol. Jo. 140—Eve, J.]

## VI. HEIRLOOMS.

See also No. 20, *infra*.

8. *Chattels Directed to Pass as and with Real Estate—Vesting in First Tenant in Tail in Remainder—Tenant in Tail Dying an Infant and Before coming into Possession—Sale by Trustees under Settled Land Acts.*—W. P. by his will and codicils directed that certain chattels "should be considered as or in the nature of

# VI. Heirlooms—Continued.

heirlooms and should pass with his said house in the same manner as if they were land or other real property appendant or appurtenant thereto and should accordingly continue annexed to his said mansion-house as long as the law would permit and be inherited or enjoyed by the several persons who should succeed to his said mansion-house."

This was an originating summons by the tenant for life to determine whether the proceeds of sale of a portion of the chattels sold by trustees appointed under the Settled Land Acts for that purpose were upon the true construction of the will and codicils the absolute property of E. C. P., who at his birth took a vested estate in tail in remainder expectant on the decease of his father, the tenant for life, or whether E. C. P., by reason of his having died an infant, while his estate was still in remainder, took no interest in the proceeds of sale.

HELD—that upon the true construction of the will and codicils, in the absence of express provision, the chattels having been simply directed to pass as heirlooms with the real estate, E. C. P., being the first person who under the limitations of the settlement became entitled to a vested estate tail in remainder, was absolutely entitled to the proceeds of sale.

*Foley v. Burnell* (1784) 1 Bro. C. C. 274) and *In re Cresswell, Parkin v. Cresswell* ((1883) 24 Ch. D. 102) followed.

*In re Lord Chesham's Settlement* ([1909] 2 Ch. 329) distinguished.

IN RE PARKER, PARKER v. PARKIN, [1910] 1 Ch. 581; 79 L. J. Ch. 161; 101 L. T. 943—Parker, J.

# VII. MARRIAGE SETTLEMENTS.

See also No. 6, *supra*; HUSBAND AND WIFE, No. 10; WILLS, No. 31.

## (a) General.

9. *Covenant to Maintain Wife—Wife not a Party to the Settlement—Cestui que Trust—Action by Wife for a Declaration of Trust.*—In an ante-nuptial settlement made between M. L., the husband's father, of the first part, F. L., the wife's father, of the second part, and T. L., the husband, of the third part, whereby, among other things, a life estate in the farm thereby settled was reserved to M. L., M. L., in consideration of the wife's fortune being paid to him, covenanted with T. L. to support and maintain in the house on the said farm "T. L. and his wife, and any family they may have."

HELD—that a trust in favour of the wife and attaching to the life estate of M. L. in the said lands was created by the marriage settlement.

*Gandy v. Gandy* ((1885) 30 Ch. D. 57) applied.

LEONARD v. LEONARD, 44 I. L. T. 155—C. A., [Ireland.

## (b) Covenant to Settle After-acquired Property.

See also BANKRUPTCY, No. 31.

10. *Gift from Husband—Wife Dying Intestate and without Issue—Obligation on Trustees to*

*Enforce Transfer in Favour of Volunteers.*—By a marriage settlement made in 1878 certain property was settled upon the usual trusts in favour of the wife, husband, and children of the marriage, with an ultimate trust for the next of kin of the wife; and the wife covenanted that all real and personal property to which she or her husband in her right should during the coverture become entitled should be assigned and transferred to the trustees of the settlement. The wife died in 1909 intestate and without issue, and at her death there was standing in her name certain railway debenture stock which represented a gift made to her by the husband in 1884.

HELD—(1) that such gift was bound by the covenant in the marriage settlement; but (2) that the trustees were not bound to take any steps to enforce the transfer of the stock to them, as their claim on the contract to settle was statute barred and the next of kin would not obtain equitable relief, being only volunteers.

*In re Ellis's Settlement* ([1909] 1 Ch. 618) followed.

*In re D'Angibau, Andrews v. Andrews* ((1880) 15 Ch. D. 228) applied.

IN RE PLUMPTRE, UNDERHILL v. PLUMPTRE, [1910] 1 Ch. 609; 79 L. J. Ch. 340; 102 L. T. 315; 26 T. L. R. 321; 54 Sol. Jo. 326—Eve, J.

11. *Bequest to Wife—Free from any Covenant in Marriage Settlement—Possibility of Forfeiture—Validity of Condition—Intentions of Testator.*—By her marriage settlement a lady covenanted to bring under the trusts of the settlement any property exceeding in value £200. A legacy was subsequently left to her absolutely and for her separate use and with the condition "so as to be free from any covenant contained in her marriage settlement to settle after-acquired property."

HELD—that the condition was void, and that the legacy must be bound by the covenant.

IN RE WHARTON, WHARTON v. BARMBY, 102 [L. T. 531—Parker, J.

## (c) Illegal Consideration.

[No paragraphs in this vol. of the Digest.]

## (d) Interpretation.

[No paragraphs in this vol. of the Digest.]

## (e) Powers of Appointment.

See POWERS.

# VIII. TENANT FOR LIFE.

## (a) General.

[No paragraphs in this vol. of the Digest.]

## (b) Persons having Powers of Tenant for Life.

12. *Trust to Pay Residue of Income to Wife During Widowhood—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58 (1) (ix.).*—A testator devised his real estate upon trust out of the rents and profits and until the death or marriage again of his wife to pay certain annuities and the expenses of management of his estate, and to pay the ultimate residue of the rents and profits to his wife during widowhood.

HELD—that the widow was a person having

VIII. **Tenant for Life**—*Continued.*

the powers of a tenant for life under clause ix. of the Settled Land Act, 1882, sect. 58 (i.).

IN RE SUMNER'S SETTLED ESTATES, 55 Sol. Jo. [155—Eve, J.]

(c) **Powers.**

*See also* No. 20, *infra*.

(i.) **General.**

**13. Power to Revoke Trusts—Construction—“Actual Possession.”**—The fact of his having previously assigned his life estate does not prevent a tenant for life becoming entitled to the “actual possession” of the estate under the limitations of the settlement.

Under a marriage settlement P. was empowered if he became entitled to the “actual possession” of the P. estates under the limitations of the P. settlement, to revoke certain trusts. P. assigned the life estate to which he was entitled in remainder under the P. settlement, and subsequently became entitled to the P. estates subject to such assignment. Later, P. revoked the trusts of the marriage settlement.

HELD—that “actual possession” did not mean physical possession, but possession under the terms of the settlement itself, and that, consequently, the power of revocation had duly arisen.

IN RE LORD PETRE'S SETTLEMENT, LEIGH v. [PETRE, [1910] 1 Ch. 290; 79 L. J. Ch. 145; 101 L. T. 847; 54 Sol. Jo. 199—Joyce, J.]

(ii.) **Leasing.**

**14. Land Situate in Scotland—English Trustees—Power to Trustees to Grant Leases such as could be Granted by Tenant for Life of English Settled Land—Power to Grant Feus—Application to Scottish Courts—Nobile Officium—Form of Order.**—It is necessary to invoke the *nobile officium* of the Scottish Courts in order to confer formal authority upon English trustees to deal with settled land situate in Scotland by granting feus thereof in accordance with the custom of the locality.

IN RE FORREST, FORREST v. FORREST, [1910] [W. N. 201; 54 Sol. Jo. 737—Parker, J.]

(iii.) **Sale.**

**15. Settled Land—Sale by Tenant for Life—Mortgages of the Life Estate—Costs of Mortgagees Assenting to Conveyance—Direction of the Tenant for Life—Discretion of the Trustees of the Settlement—Costs of Solicitors of Tenant for Life—Special Arrangement as to Costs of Solicitors.**—P., a tenant for life of settled estates, who had incumbered his life interest, sold a portion of the estates by auction in lots under the Settled Land Acts, and the purchase-money was paid to the trustees of the settlement.

The incumbrancers, not being parties to the conveyances, had given their assent by separate instruments. P. directed the trustees to pay the costs of the incumbrancers, and also of assignees

in whom the life estate had become vested, out of the purchase-moneys.

HELD—that the principle of the decision in *Curdigan v. Curzon-Howe* applied equally whether the purchase-moneys were in the hands of trustees or in Court, and that, there being no special circumstances in the case, the trustees were not at liberty to pay these costs out of the purchase-moneys.

*Cardigan v. Curzon-Howe* ((1889) 41 Ch. D. 375) applied.

Observations upon the duty of trustees as to costs directed by the tenant for life to be paid by them.

IN RE SIR ROBERT PEEL'S SETTLED ESTATES, [1910] 1 Ch. 389; 79 L. J. Ch. 233; 102 L. T. 67; 26 T. L. R. 227; 54 Sol. Jo. 214—Warrington, J.]

**16. Future Trust for Sale—Remoteness—Tenants for Life also Trustees—Trustee for the Purposes of the Settled Land Acts—Mortgage of Life or Other Interest—Concurrence of Mortgagee—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 2 (8), 20, 50—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 16 (2).**—J. M. by his will devised real estate to his son J. S. M. and another upon trust to pay the income to his three children during their lives, and he empowered each of his said children by will to nominate and appoint his or her wife or husband to receive during widowhood the share of such child in the said income, and he directed that upon the death of the last survivor of all his children, and of such of their wives and husbands as were appointees under the provisions aforesaid, his trustees should sell his real estate and divide the proceeds equally between all his grandchildren then living. The testator, J. M., died in 1877. In 1893 J. S. M. appointed his sister, Mrs. G., trustee of the will in place of the other trustee who had died. In 1898 J. S. M. and Mrs. G. sold certain houses, part of the estate, to A. D. The conveyance recited that J. S. M. and Mrs. G. were tenants for life and trustees for the purposes of the Settled Land Acts. In 1909 A. D. agreed to sell the houses to J. K. On a vendor and purchaser summons issued by J. K., asking for a declaration that the vendor had not shown a good title on the grounds that the trust for sale in the will of J. M. was void for remoteness, as an appointee might have been born after the death of the testator, and that the trustees, being tenants for life at the time of the sale in 1898, could not be trustees for the purposes of the Settled Land Acts:—

HELD—that the question was not how the power might have been exercised, but how it was in fact exercised, that the gift had not been exercised so as to offend the rule against perpetuities, and that there was at the time of the conveyance in 1898 a future trust for sale not then invalid.

*In re Bowles, Page v. Page* ([1905] 1 Ch. 371) applied.

HELD ALSO—that sect. 16, sub-sect. 2, of the Settled Land Act, 1890, made the tenants for life



VIII. *Tenant for Life—Continued.*

trustees of the settlement for the purposes of the Settled Land Acts.

*In re Jackson's Settled Estate* ([1902] 1 Ch. 258) applied.

Decision of Neville, J., ([1910] W. N. 61; 102 L. T. 423) affirmed.

**HELD, FURTHER**—that sect. 20, sub-sect. 2 (ii.) of the Settled Land Act, 1882, did not extend to mortgages and charges created by beneficiaries under the settlement of their own interests whether in possession or remainder, and that the tenants for life had power to convey free from such incumbrances.

*In re Dickin and Kelsall's Contract* ([1908] 1 Ch. 218) approved and followed.

*In re Mundy and Roper's Contract* ([1899] 1 Ch. 275) considered.

**IN RE DAVIES AND KENT'S CONTRACT**, [1910]  
[2 Ch. 35; 79 L. J. Ch. 689; 102 L. T. 622—  
C. A.]

**17. Conditional Gift in Will—Invalid Condition—Occupation of House—Gift Over—Settled Land Act, 1882** (45 & 46 Vict. c. 38), ss. 51, 58.]  
—A testator by his will desired his trustees to allow his sister A. to occupy his house at R. free of any charge or rent, provided that, if she did not commence occupation within three months of the testator's death, or if she ceased occupation at any time for more than three months except by unavoidable necessity, the house should fall into his residuary estate. A. entered into occupation of the house within three months of the testator's death, but desired to sell it.

**HELD**—that A. was a tenant for life of the house within the meaning of the Settled Land Acts, and that the proviso in the will for a gift over on cesser of occupation was void under sect. 51 of the Settled Land Act, 1882.

**IN RE GRIFFITHS, HEASTY v. GRIFFITHS**,  
[130 L. T. Jo. 106—Neville, J.]

(d) *Remainderman and Tenant for Life.*

See also No. 20, *infra*; WILLS, No. 49.

**18. Capital Moneys—Purchase of Railway Stock—Dividends Earned but Not Paid Before Purchase—Capital or Income.**—Trustees under the direction of the tenant for life had invested part of the purchase-moneys arising from the sale of settled land in the stock of railway A. and in the stock of railway B. In the one case the company had declared a dividend on the stock, and in the other case had passed the accounts showing sufficient to provide for the dividend for the half-year which had ended previously to the purchase. By the usage of the Stock Exchange under which the purchases were made, these dividends belonged to the trustees as purchasers.

**HELD**—that the dividends were capital moneys, and did not belong to P. as income.

**IN RE SIR ROBERT PEEL'S SETTLED ESTATES**,  
[1910] 1 Ch. 389; 79 L. J. Ch. 233; 102 L. T. 67; 26 T. L. R. 227; 54 Sol. Jo. 214—  
Warrington, J.]

**19. Fixtures—Mansion-house—Sale under Settled Land Acts.**—A testator devised a mansion-house and other realty in strict settlement. In the mansion-house were certain carvings in wood affixed to the walls, which had been there since the house was built about the year 1680 or 1690. They were fixed originally by nails, screws, or pegs, driven through them into stiles or battens built into the walls; but there was evidence that they were independent of the constructional work of the house, and some of them had in fact been moved from their original positions.

**HELD**—that the carvings were fixtures and formed part of the mansion-house, and that the proceeds from their sale were capital moneys subject to the settlement.

**IN RE LORD CHESTERFIELD'S SETTLED ESTATES**, 130 L. T. Jo. 33—Joyce, J.]

(e) *Rights and Duties.*

**20. Heirlooms—Power to Sell—Settled Land Acts.**—A tenant for life is to be regarded as a trustee for all the persons interested in the settled estate, and in exercising the extensive powers conferred upon him by the Settled Land Acts he is bound to regard not his own interests only, but also those of the persons who are to follow him. In considering those interests more weight must be given to those of persons nearest in succession than to the interests of those who are more remote. The Court's duty when asked to sanction an exercise of the tenant for life's powers under the Acts is to put itself in the position of an honest tenant for life striving to do his duty with regard to the interests of all concerned; the Court may, however, properly give a certain weight to the opinions and wishes of the tenant for life as head of the family. The Court sanctioned the sale by a tenant for life of certain heirlooms.

**IN RE HOPE'S SETTLED ESTATES**, 26 T. L. R. 549  
[413—Warrington, J.]

IX. *TRUSTEES.*

See VIII. (c) (iii.), *supra*.

X. *VOLUNTARY SETTLEMENTS.*

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See FISHERIES.

## SEWERS AND DRAINS.

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See also HIGHWAYS, Nos. 7, 8; LOCAL GOVERNMENT; METROPOLIS; NUISANCE; PUBLIC HEALTH; RATES, Nos. 11, 12, 13; WATERS, Nos. 2, 3, 4, 6, 7.

**I. "DRAIN" OR "SEWER."**

1. *Drain Belonging to a Main Road—Connections Made with Drain—"Sewer"—Damage Caused by Blocking of Drain—Liability—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11.*—A drain which, at the passing of the Public Health Act, 1875, was vested in, and was under the control of, an authority having the management of roads and not being a local authority under that Act, and which, as being a drain "belonging to a main road" within sect. 11, sub-sect. 6, of the Local Government Act, 1888, is vested in the county council, does not become a "sewer" so as to be vested in the sanitary authority merely by reason of some unauthorised connection being made between a house and the drain. The sanitary authority is, therefore, not liable for damage caused in consequence of such a drain being blocked.

RICKARBY v. NEW FOREST RURAL DISTRICT [COUNCIL, 74 J. P. 441; 26 T. L. R. 586; 8 L. G. R. 893—Warrington, J.]

**II. "SINGLE PRIVATE DRAIN."**

[No paragraphs in this vol. of the Digest.]

**III. RIGHTS AND DUTIES.****(a) General**

2. *Sewage Arising Outside District—Connection by Sanitary Authority—Subsequent Right to Impose Terms—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 21, 22.*—When once a local authority has agreed with the owner of premises outside their district and connected the drains of those premises with their sewer, the owner's position is similar to that of an owner inside the district under sect. 21 of the Public Health Act, 1875, and the connection cannot be interfered with. Sect. 22 of the Act, which empowers an outside owner to have his drains connected with the local authority's sewer subject to terms to be agreed or settled as therein provided, no longer applies where an outside owner is desirous of leaving an existing connection as it is. Slight internal alterations of the owner's drains do not constitute a fresh communication within sect. 22.

Attorney-General v. Clerkenwell Vestry, ([1891] 3 Ch. 527) and Brown v. Dunstable Corporation ([1899] 2 Ch. 378) applied.

Decision of Eady, J. ([1909] W. N. 189; 101 L. T. 199; 73 J. P. 427; 26 T. L. R. 2) affirmed.

EAST BARNET VALLEY URBAN DISTRICT [COUNCIL v. STALLARD, [1909] 2 Ch. 555; 79 L. J. Ch. 103; 101 L. T. 642; 74 J. P. 9; 26 T. L. R. 22; 51 Sol. Jo. 30; 8 L. G. R. 192—C. A.]

**(b) Cesspools.**

[No paragraphs in this vol. of the Digest.]

**(c) Drainage and Sewerage.**

3. *Expenses of Constructing New Sewer in Street—Liability of Frontager—Rochdale Improvement Act, 1872—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150.*—By a local Act of 1872 the boundaries of Rochdale were extended, and a certain street upon which the property of the defendant abutted was included within the boundary of the town. By sect. 171 of the local Act it was provided that "where the corporation should cause any new sewer to be constructed in any street in which there was not a sewer, or in which the existing sewer was insufficient, they may charge the owners of the lands abutting upon such street with the payment of the expenses incurred in the construction of the same. . . ." The corporation laid a new sewer in the street, and apportioned the expenses upon the frontagers.

HELD—that on the true construction of the private Act the defendant was liable to pay his share towards the expenses of the new sewer, the right of the corporation to levy contributions not being confined to new streets.

Decision of Lord Alverstone, C.J., reversed.

ROCHDALE CORPORATION v. LEACH, 101 L. T. [881; 74 J. P. 89; 54 Sol. Jo. 134; 8 L. G. R. 267—C. A.]

**(d) Nuisances.**

[No paragraphs in this vol. of the Digest.]

**(e) Vesting in Local Authority.**

See No. 1, *supra*.

**IV. LAND DRAINAGE.**

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**SHERIFFS AND BAILIFFS.**

*See* BANKRUPTCY; COUNTY COURTS;  
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COL.

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See also ADMIRALTY JURISDICTION AND PRACTICE; CARRIERS, No. 3; DEPENDENCIES, No. 25; INCOME TAX, No. 4; INSURANCE, V.; PUBLIC HEALTH, No. 3.

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**(b) Liability for Disbursements.**See No. 1, *infra*.**(c) Mortgage.**

See also DEPENDENCIES, No. 6.

1. *Mortgage Taking Possession—Coal Previously supplied to Mortgagees for Voyage on which Freight Earned—Right of Vendor of Coal to Payment out of Freight.*—The respondents sold in this country coal to the owners of the *Argentino* for a voyage to Montevideo and back, payment to be at thirty days. Subsequently the appellants, as mortgagees, took constructive possession of the *Argentino*. By an order of Court the freight of the *Argentino* was ordered to be collected, the necessary disbursements paid, and the balance brought into Court. The respondents, not having been paid for the coal supplied, claimed to be entitled to payment out of the freight which had been earned on the voyage to Montevideo and back.

HELD—that although the coal was used for the purpose of earning freight on that voyage, it was supplied to the mortgagees, and not to the appellants, and that therefore the respondents were not entitled to payment out of the freight, which must be paid to the appellants as mortgagees.

EL ARGENTINO, [1909] P. 236; 78 L. J. P. 102; [101 L. T. 80; 25 T. L. R. 518; 11 Asp. M. C. 280—Bigham, Pres.

**(d) Sale.**

[No paragraphs in this vol. of the Digest.]

**(e) Ownership.**

[No paragraphs in this vol. of the Digest.]

**II. SEAMEN.**

See also MASTER AND SERVANT, Nos. 16, 50, 51, 52, 53, 54, 55, 108, 113, 114, 115.

**(a) Wages.**

2. *Deductions from Wages—Agreement—Stipulation Contrary to Law—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 113, 114, 221, 226.*—An agreement between the master of a British ship and the crew contained the following stipulation: "The said master shall be entitled to deduct from the wages of any member of the said crew the following amounts, viz.: for not

joining at the time specified in column 11, two days' pay, or at his option any expenses which have been properly incurred in hiring a substitute; and for absence at any time without leave from his ship or from his duty, a sum equal to two days' pay for any period of absence not exceeding 24 hours, and a further sum equal to four days' pay for each succeeding completed or uncompleted period of 24 hours' absence."

HELD—that the above-quoted stipulation was inconsistent with the provisions of sect. 221, clause (b), of the Merchant Shipping Act, 1894, and was contrary to law.

MERCANTILE STEAMSHIP CO., LD. AND DALE v. [HALL, [1909] 2 K. B. 423; 78 L. J. K. B. 812; 100 L. T. 885; 25 T. L. R. 623; 53 Sol. Jo. 562; 14 Com. Cas. 208; 11 Asp. M. C. 273—Pickford, J

On Appeal—appeal withdrawn by consent (see [1909] W. N. 232).

**(b) Bonus.**

[No paragraphs in this vol. of the Digest.]

**(c) Effect of Carrying Contraband.**

[No paragraphs in this vol. of the Digest.]

**(d) Miscellaneous.**

[No paragraphs in this vol. of the Digest.]

**(e) Termination of Service.**

3. *Articles—Voyage to End "As May Be Required by Master"—Discharge of Cargo—Taking Bunker Coal for Future Voyage—End of Voyage.*—A seaman signed articles to serve on board a ship for a voyage not to exceed two years and "to end at such port in the United Kingdom or Continent of Europe (within home trade limits) as may be required by the master." The ship sailed from London with a cargo and ultimately came to Rotterdam, where the last of the cargo was discharged. She then came to the Tyne, having between 100 and 200 tons of bunker coal on board. In the Tyne she took on board a further supply of 1,300 tons of bunker coal, and the seaman there claimed his discharge and wages on the ground that the voyage had come to an end. The master had not required the voyage to end at the Tyne, and he declined to discharge the seaman on the ground that the voyage was not completed, but he did not then say where the ship was proceeding to, but afterwards said that she was to proceed to Glasgow. The 1,300 tons of coal was not required to take the ship to Glasgow.

HELD—that the mere fact of taking on board the 1,300 tons of bunker coal in the Tyne was not of itself sufficient to show that the voyage ended at the Tyne, and as the master had not required it to end at the Tyne the voyage was not ended there, and the seaman was not entitled to claim his discharge and wages.

The *Scarsdale* ([1907] A. C. 373) followed.

HAYLET v. THOMPSON, [1910] W. N. 227; 103 [L. T. 509; 74 J. P. 480—Div. Ct.

4. *Refusal of Master to give Certificate of Discharge—Liability of Owners—Relevancy—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60)*



11. *Seamen—Continued.*

s. 128 (1) — *Merchant Shipping Act, 1906* (6 Edw. 7, c. 48), s. 31.]—A seaman, on the averment that the master of a vessel on which he had served had failed to give him a certificate of discharge in terms of the Merchant Shipping Acts, claimed damages from the owners of the vessel.

HELD—that the action was irrelevant in respect that under the provisions of the Merchant Shipping Acts the duty of giving a certificate lay upon the master, as such, and that he alone was responsible for failure to perform it.

DOWNIE v. CONNELL BROTHERS, LD., [1910]  
[S. C. 781; 47 Sc. L. R. 666—Ct. of Sess.]

## III. HIRE OF SHIP.

(a) *Determination of Ship.*

See No. 17, *infra*.

(b) *Exceptions in Charter-party.*

5. *Time Charter-party—Strike Clause—Mutuality—Commercial Frustration—Liability of Charterers.*]—By a time charter-party the owners agreed to let and the charterers agreed to hire a steamship for the term of one trip from Newcastle in New South Wales to the west coast of South Africa. It was provided that the charterers "shall" pay hire at the rate of £1,000 per calendar month, commencing twenty-four hours after the vessel was placed at the charterers' disposal and to continue until the hour of her re-delivery to the owners. Payment of hire was to cease under certain events, but strikes were not included. The charter-party provided: "The act of God, perils of the seas, fire, barratry of the master and crew, enemies, pirates, robbers, arrests and restraints of princes, rulers, and people, strikes, collisions, strandings, and accidents of navigation, and all losses and damages caused thereby, are always excepted, even when occasioned by the negligence, default, or error in judgment of the pilot, master, mariners, or other persons employed by the owners, or for whose acts they are responsible, but nothing herein contained shall exempt the owners from liability to pay for damage to cargo occasioned by bad stowage . . . or by causes other than those excepted, and all the above exceptions are conditional on the vessel being seaworthy when she enters on the charter, but any latent defects in the machinery shall not be considered unseaworthiness, provided the same do not result from want of due diligence of the owners. . . . This clause is not to be construed as in any way affecting or cancelling the provisions for cessation of hire as provided in this charter-party."

When the vessel was placed at the disposal of the charterers there was a strike in operation at Newcastle, which prevented the loading of coal.

It was in the contemplation of both parties that the purpose of the employment of the ship was to load coal at Newcastle to carry it to the west coast of South Africa.

HELD—that the exception of strikes was not mutual, and did not protect the charterers; and

that the commercial object of the charter-party had not been frustrated by the existence of the strike.

*Barrie v. Peruvian Corporation* ((1896) 2 Com. Cas. 50) distinguished.

BRAEMOUNT STEAMSHIP CO., LD. v. ANDREW [WEIR & CO., 102 L. T. 73; 26 T. L. R. 248; 15 Com. Cas. 101; 11 Asp. M. C. 345—Bray, J.]

6. *Deviation—Liability of Owners.*]—Where a ship deviates from the voyage contemplated by the charter-party, the shipowners are not protected by exceptions from liability contained in the charter-party for damage to the cargo occurring either before or after such deviation, as they are then in the position of common carriers.

INTERNATIONALE GUANO-EN SUPERPHOS-  
[PHAATWERKEN v. ROBERT MACANDREW  
& CO., [1909] 2 K. B. 360; 78 L. J. K. B. 691;  
100 L. T. 850; 25 T. L. R. 529; 53 Sol. Jo.  
504; 14 Com. Cas. 194; 11 Asp. M. C. 271—  
Pickford, J.]

(c) *Loading and Discharge of Cargo.*

See also No. 33, *infra*.

7. *Charter-party—Cancelling Clause—Supply of Stiffening—Readiness for Loading.*]—The L., then being at C. discharging a cargo of coal and intending to complete her discharge at I., was chartered to load at those two ports a full and complete cargo of nitrate. Clause 4 of the charter-party provided that "stiffening of nitrate to be supplied at I. but not before December 10th, 1907, on receipt of 48 hours' notice from captain of his readiness to receive same or lay days to count." Clause 13 provided that "should the vessel not have arrived at her loading port and be ready for loading . . . on or before noon of January 31st, 1908, charterers to have the option of cancelling this charter." The vessel arrived at I. on December 13th, 1907, having then on board more than half her coal cargo; and by January 27th, 1908, she had discharged as much of that cargo as could safely be unladen, unless some stiffening in the way of ballast or sufficient cargo was put on board. Between the time when that notice would expire, viz., on January 29th, and noon of January 31st, the coal still remaining on board could not have been discharged. The charterers refused to comply with the captain's notice requiring a supply of stiffening, unless the captain would agree to redeliver it if the charter-party was cancelled, and on January 31st they cancelled the charter. In an action by the shipowners against the charterers claiming damages for breach of charter-party:—

HELD—that the ship's being ready to receive stiffening was not the same thing as being ready for loading within the meaning of clause 13; that, as the ship was not ready to load cargo within the meaning of that clause by noon of January 31st, 1908, the charterers were entitled to exercise their option of cancelling the charter; and, therefore, that the action failed.

Decision of Lord Alverstone, C.J. (100 L. T.

## III. Hire of Ship—Continued.

736; 25 T. L. R. 503; 14 Com. Cas. 181; 11 Asp. M. C. 237) affirmed.

SAILING SHIP *LYDERHORN Co. v. DUNCAN* [FOX & Co., [1909] 2 K. B. 929; 79 L. J. K. B. 105; 101 L. T. 295; 25 T. L. R. 739; 14 Com. Cas. 293; 11 Asp. M. C. 291—C. A.

8. *Charter-party—Contract to Load a Cargo of* “not less than 6,500 tons but not exceeding 7,000 tons”—*Extent of Charterers' Obligation.*—A charter-party provided that a ship should proceed to a named port and load “a cargo of beans not less than 6,500 tons but not exceeding 7,000 tons net intake weight of beans in bags as usual which the said charterers bind themselves to ship not exceeding what she can reasonably stow and carry over and above her cabin bunkers, tackle, apparel, provisions, and furniture.” It also contained the following clause: “Charterers to have the option of underletting the whole or part of the steamer.”

HELD—that the words “not less than 6,500 tons” constituted a warranty by the shipowners to the charterers that the vessel could carry that quantity, and that the words “not exceeding 7,000 tons” was a term binding the shipowners not to ask for more than 7,000 tons, but entitling them to receive that quantity if within the capacity of the vessel.

HELD ALSO—that, having in fact shipped under duress and protest a larger quantity of cargo than that required by the terms of the charter-party, the charterers were entitled to have the excess quantity carried freight free.

JARDINE, MATHIESON & Co. v. CLYDE SHIP- [PING Co., [1910] 1 K. B. 627; 79 L. J. K. B. 634; 102 L. T. 462; 26 T. L. R. 301; 15 Com. Cas. 193; 11 Asp. M. C. 384—Hamilton, J.

9. *Charter-party—Despatch Money—Calculation of Time—Discharge—Running Days—Exceptions—“Running Days Saved.”*—By a charter-party the charterers were allowed twenty running days for the discharge of cargo, “holidays and time between 1 p.m. Saturdays and 7 a.m. Mondays excepted,” and the shipowners were to pay “£10 per day despatch money for each running day saved.”

HELD—that by “saved” was meant days saved to the shipowner and not discharging days saved; that the exception of holidays and time from 1 p.m. on Saturday to 7 a.m. on Monday did not apply to the calculation of running days saved by the completion of discharge of cargo before the total period allowed for such discharge, including the excepted times, had expired; and that therefore the charterers were entitled to despatch money in respect of a continuous period of calendar days from the actual time when the discharge was completed to the time when they would have ceased to be entitled to any despatch money.

*Living v. Holtway* (1878) 3 Q. B. D. 437, *The Glendevon* ([1893] P. 269), and *Nelson and*

*Sons v. Nelson Line, Liverpool* ([1907] 2 K. B. 705) considered and discussed.

IN RE ROYAL MAIL STEAM PACKET Co., LD., [AND RIVER PLATE STEAMSHIP Co., LD. [1910] 1 K. B. 600; 79 L. J. K. B. 673; 102 L. T. 333; 15 Com. Cas. 124; 11 Asp. M. C. 372—Bray, J.

## (d) Miscellaneous.

10. *Damages for Breach of Charter-party—Indemnity.*—The appellants chartered a ship of the respondents, and by the charter-party they were bound to present bills of lading which threw upon the ship no greater liability than that contemplated by the charter-party.

The ship loaded a cargo of cotton to be delivered in France, and bills of lading were signed by the master which specified the marks on the bales of cotton shipped. When the ship arrived at her port of discharge, the marks on some of the bales of cotton did not correspond with the marks specified in the bill of lading, and the consignees refused to accept them, the respondents having to pay damages for short delivery.

HELD—that they were entitled to recover from the appellants the amount so paid, it being the duty of the charterers under the charter-party to load bales properly marked as specified in the bill of lading.

Decision of C. A. affirmed.

ELDER, DEMPSTER & Co. v. DUNN & Co., 101 [L. T. 578; 15 Com. Cas. 49; 11 Asp. M. C. 337—H. L.

11. *Charter-party—Cancelling Clause—Option to Cancel on Non-arrival—Time when Option must be Exercised.*—A charter-party, dated March 18th, 1907, contained the following clause: “The charterers or their agents have the option of cancelling this charter-party, provided the ship is not arrived as within described at Newcastle, New South Wales, by the 15th Dec., 1907.” Shortly before December 15th, 1907, the charterers were informed by the shipowners that the ship was detained and could not arrive by the cancelling date, and they were asked to state whether they would exercise their option to cancel or not. This they refused to do, and required the shipowners to send the ship to Newcastle in accordance with the charter-party. The ship arrived at Newcastle on June 15th, 1908, when the charterers exercised their option to cancel, and refused to load her. In an action by the shipowners for damages for the defendants’ refusal to load:—

HELD—that the charterers were entitled to exercise the option to cancel on the arrival of the ship at Newcastle, and were not bound to do so prior thereto.

Decision of Bray, J., (101 L. T. 954; 54 Sol. Jo. 217; 15 Com. Cas. 61; 11 Asp. M. C. 342) affirmed.

MOEL TRYVAN SHIPPING Co., LD. v. ANDREW [WEIR & Co., [1910] 2 K. B. 844; 79 L. J. K. B. 898; 103 L. T. 161; 15 Com. Cas. 307—C. A.

## III. Hire of Ship—Continued.

## (e) Payment of Freight.

12. *Lien for Freight and Dead Freight—Liability of Holders of Bills of Lading.*—By a clause in a charter-party a vessel was to have a lien on the cargo for recovery of all bill of lading freight, dead freight, etc. By the bills of lading the consignees, as well as "performing all other conditions and exceptions as per charter-party," were to pay freight, "per the rate of freight as per charter-party per ton of 2,240 lbs. gross weight delivered in full . . . 6d. less if ordered to a direct port on signing last bill of lading." The vessel was ordered to a direct port.

By the charter-party the vessel was not to earn more freight than she would with a full cargo of wheat or maize in bags, but the charterers might ship other lawful merchandise, in which case freight was to be paid on the vessel's dead-weight capacity for wheat or maize in bags at the agreed rate of 12s. 6d. per ton, subject to the reduction of 6d. if the vessel were ordered to a direct port. The charterers failed to complete the loading.

HELD—that the owners were only entitled to recover from the holders of the bills of lading freight at the rate of 12s. per ton delivered, and were not entitled to succeed in their claim with respect to dead freight.

Decision of C. A. (101 L. T. 510; 25 T. L. R. 791; 14 Com. Cas. 303; 11 Asp. M. C. 317) affirmed.

RED "R." STEAMSHIP CO. v. ALLATINI  
[BROS. AND OTHERS, 103 L. T. 86; 26 T. L. R. 261; 15 Com. Cas. 290—H. L.]

## (f) Period of Hire.

See No. 5. *supra*.

## (g) Warranties.

[No paragraph in this vol. of the Digest.]

## IV. INCORPORATION OF CHARTER-PARTY IN BILL OF LADING.

See also V. (d) and No. 16, *infra*.

13. *Negligence Clause—Constructive Notice—Loss of Part of Cargo by Negligence—Liability of Shipowners.*—By the terms of a charter-party the shipowners were exempted from liability in respect of loss occasioned by, *inter alia*, "accidents of navigation even when occasioned by negligence, default, or error in judgment of the master, mariners, or other servants of the shipowners." The bill of lading signed by the master, so far as it referred to the charter-party, contained only the words "all other conditions as per charter-party." The plaintiffs were the receivers of the cargo shipped under the bill of lading. In their contract of purchase they had stipulated with the sellers, "tonnage to be engaged on conditions of charter-party attached," which form contained the negligence clause. When the cargo arrived there was a shortage due to the negligence of those on board the vessel, in respect of which the plaintiffs sued the shipowners for damages.

HELD—that the proper inference from the facts was that the plaintiffs knew that the charter-party contained the negligence clause, and therefore that the shipowners were not liable.

Decision of C. A. ([1909] P. 219; 78 L. J. P. 90; 25 T. L. R. 438) reversed.

OWNERS OF S.S. DRAUPNER v. OWNERS OF  
[CARGO OF S.S. DRAUPNER, THE DRAUPNER,  
[1910] A. C. 450; 79 L. J. P. 88; 103 L. T. 87;  
26 T. L. R. 571—H. L.]

14. *Arbitration Clause—Action for Demurrage—Stay of Proceedings.*—A clause in a charter-party provided for the discharge of the cargo by the steamer with customary steamer despatch according to the custom of the port, and for demurrage at the rate of £25 a day if the steamer should be detained through any fault of the merchant or charterer. Another clause provided that any dispute or claim arising out of any of the conditions of the charterparty should be settled by arbitration. By a bill of lading goods shipped under it were to be delivered to the shipper or his assigns, he or they paying freight, with other conditions as per charterparty. In the margin of the bill of lading was also written "all other terms and conditions and exceptions of charter to be as per charterparty including negligence clause." The shipowners having commenced an action for demurrage in the county court against the holders of the bill of lading:—

HELD—that the arbitration clause in the charterparty was incorporated in the bill of lading, and therefore that proceedings in the action must be stayed.

THE PORTSMOUTH, [1910] P. 293—Div. Ct.

## V. CARRIAGE OF GOODS.

See also IX. and No. 56, *infra*; AGENCY, No. 1; ANIMALS, No. 6; PRACTICE, Nos. 7, 8.

## (a) Deviation of Ship.

15. *Exceptions in Charter-party—Protection Lost by Deviation.*—Where a ship deviates from the chartered voyage, the shipowners lose the protection of the exceptions from liability contained in the charter-party, not only in respect of damage occasioned to the cargo after the deviation, but also in respect of that which has been occasioned on the voyage prior thereto. In such a case the shipowners are in the position of common carriers.

INTERNATIONALE GUANO-EN SUPERPHOS-  
[PHAATWERKEN v. ROBERT MACANDREW &  
Co., [1909] 2 K. B. 360; 78 L. J. K. B. 691;  
100 L. T. 850; 25 T. L. R. 529; 53 Sol. Jo.  
504; 14 Com. Cas. 194; 11 Asp. M. C. 271—  
Pickford, J.]

16. *Deviation for Repairs—Unseaworthiness at Commencement of Voyage.*—Where the necessity for a deviation arises from the default of the shipowner in sending the ship to sea in an unseaworthy state he cannot claim to be in a different

### V. Carriage of Goods—Continued.

position from that in which he would have been had the deviation itself been unnecessary.

*Strang, Steel & Co. v. Scott & Co.* (1889) 14 A. C. 601 discussed and applied.

Decision of Walton, J. ([1910] 2 K. B. 309; 79 L. J. K. B. 1113; 102 L. T. 910; 26 T. L. R. 504; 54 Sol. Jo. 565; 15 Com. Cas. 268), reversed.

KISH v. TAYLOR, *Times*, December 26th, 1910—[C. A.

#### (b) Discharge of Cargo.

See also V. (d), *infra*.

17. *Charter-party—Bills of Lading*—"Customs Formalities and Detentions at New York to be at the Risk and Expense of Consignee of Goods"—*Customs Examination—Detention of Ship—Wharfage Expenses—Liability of Consignee—Neglect of Ship's Agents to Enforce Claim against Consignees.*—A ship was, in accordance with the charter-party, consigned to agents at New York nominated by the charterers. The ship was to discharge her cargo as fast as she could put out and according to the custom of the port. The bills of lading, as provided for in the charter-party, contained the following clause: "Customs formalities and detentions at New York to be at the risk and expense of consignee of goods." The ship was not discharged as fast as she put out to the extent of five days, owing to compliance with customs formalities. The agents took no steps to enforce against the consignees any claim for expenses, charges, demurrage, or detention caused by compliance with customs formalities. The charterers assumed full responsibility for the acts of the agents.

HELD—that the above clause in the bills of lading meant that the consignees of goods could make no claim against the ship in respect of charges and delays caused by compliance with customs formalities, and that each consignee was required to pay the charges which naturally appertained to his parcel of goods, but that he was not liable to pay any part of the general charges for wharf hire, tiering, or breaking down; that the term "detention" referred to the detention of the goods and not of the ship, and, therefore, the five days' detention of the ship was not an "expense" within the meaning of that clause.

HELD FURTHER—that in the absence of specific instruction to the agents to assert a lien there was no breach of duty on the part of the agents in abstaining from asserting a lien or from bringing a number of actions against the consignees.

Decision of Channell, J. (14 Com. Cas. 141) reversed.

COBRIDGE STEAMSHIP CO., AND BUCKNALL [STEAMSHIP LINES, 15 Com. Cas. 138—C. A.

18. *Discharge in Accordance with Custom of Port—Cargo of Lumber—Stowage in Barges—Custom of Port of London.*—By the custom and practice of the Port of London in the case of cargoes of lumber the receiver is liable only to provide sufficient open craft alongside ready to receive

the goods, and is under no obligation to have any men thereon to receive the goods from the ship's tackle or to stow the goods therein. The shipowner is bound to do the whole work of delivering the goods into the barges, whether dock company's barges or outside barges, and of stowing the goods therein in the reasonable and ordinary manner so that the goods may not be damaged or imperilled, and so that the barges may be loaded to the usual and reasonable extent and may be safely and properly navigable.

GLASGOW NAVIGATION CO., LD. v. W. W. [HOWARD BROTHERS & Co., 102 L. T. 172; 26 T. L. R. 247; 15 Com. Cas. 88; 11 Asp. M. C. 376—Hamilton, J.

#### (c) Documents of Title.

19. *Sale of Goods—C.I.F. Contract—Payment—Net Cash—Right of Inspection—Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), ss. 28, 32, and 34.—Payment under a c.i.f. contract, "terms net cash" must be made on the tender of the shipping documents, notwithstanding that at the date of such tender the goods have not arrived.

BIDDELL BROTHERS v. E. CLEMENS. HORST & [Co., [1910] W. N. 238; 27 T. L. R. 47; 55 Sol. Jo. 47—Hamilton, J.

#### (d) Exceptions in Bill of Lading.

See also No. 17, *supra*; No. 37, *infra*.

20. *Charterers becoming Endorsees of Bill of Lading—Damage to Cargo.*—A clause in a charter-party provided: "The captain to sign bills at any rate of freight without prejudice to this charter-party, but not below charter-party rate. . . ." The charter-party also contained an exceptions clause, which, however, was not material in the particular case. A cargo of dates was shipped by a third party for delivery in London under a bill of lading, which contained an exceptions clause which, if the bill of lading governed the contract of carriage, applied to protect the shipowners. After the shipment of the dates, the charterers made an advance to the shipper and took the bill of lading duly endorsed as pledgees. When the ship arrived in London, the charterers presented the bill of lading and received the dates, a portion of which was found to be seriously damaged and in respect of which the charterers claimed to recover damages from the shipowners.

HELD—that the charterers had no rights in respect of the dates except under the bill of lading, and that the exceptions clause therein protected the shipowners from liability.

*Semble*, a ship does not become unfit to carry a particular cargo merely because such cargo is stowed in a portion of a compartment which is less suitable for its carriage than another portion of the same compartment. Such impropriety would only amount to improper stowage.

STEAMSHIP CALCUTTA CO., LD. v. ANDREW [WEIR & Co., [1910] 1 K. B. 759; 79 L. J. K. B. 401; 102 L. T. 428; 26 T. L. R. 237; 15 Com. Cas. 172; 11 Asp. M. C. 395—Hamilton, J.



### V. Carriage of Goods—Continued.

**21. Negligence of Shipowners' Servants—Unseaworthiness.**—Sugar was carried under a bill of lading which contained exceptions relieving the shipowners from liability for damage arising from, *inter alia*, defects in machinery or neglect of the engineers. The exercise by the shipowners or their agents of reasonable care and diligence in connection with the ship, her tackle, machinery, and appurtenances was to be considered a fulfilment of every duty, warranty, or obligation, and whether before or after the commencement of the said voyage.

The sugar was damaged by water getting into it through a three-way cock in a pipe which was not carefully turned and by the failure of a non-return valve to act in consequence of a piece of spun yarn having got into it. In an action to recover for the damage, it appeared that the chief engineer, who had been at the building yard superintending the machinery being put together in the ship, did not know that the cock would open three ways, and that he had neglected to test it.

**HELD**—that the ship was not in the circumstances reasonably fit to carry the plaintiffs' sugar; that the damage was due to unseaworthiness; and that the defendants were not protected by clause 10 of the bill of lading.

Decision of C. A. ([1909] P. 93; 78 L. J. P. 13; 100 L. T. 357; 25 T. L. R. 230; 11 Asp. M. C. 215—C. A.) reversed.

**ABRAM LYLE & SONS v. OWNERS OF SS. "SCHWAN"; THE "SCHWAN,"** [1909] A. C. 450; 78 L. J. P. 112; 101 L. T. 289; 25 T. L. R. 742; 53 Sol. Jo. 696; 11 Asp. M. C. 286; 47 Sc. L. R. 558—H. L.

**22. Cesser of Liability when Goods Free of Ship's Tackle—Delivery to Landing Agent—Goods Afterwards Lost through Fraud.**—Goods were shipped for delivery at Penang under bills of lading which provided that the respondent company "is to have the option of delivering these goods or any part thereof into receiving ship on landing them at the risk and expense of the shipper or consignee as per scale of charges to be seen at the agent's office, and is also to be at liberty until delivery to store the goods or any part thereof in receiving ship, godown, or upon any wharf, the usual charges therefor being payable by the shipper or consignee. The company shall have a lien on all or any part of the goods against expenses incurred on the whole or any part of the shipment. In all cases and under all circumstances the liability of the company shall absolutely cease when the goods are free of the ship's tackle, and thereupon the goods shall be at the risk, for all purposes and in every respect, of the shipper or consignee."

**HELD**—that the cesser of liability clause above quoted afforded complete protection to the respondents for the loss of goods which had been discharged into lighters, landed, and improperly delivered by a representative of their landing agents without production of the bills of lading or a delivery order in fraud of the appellants

as holders of the bills of lading and delivery order.

**CHARTERED BANK OF INDIA, AUSTRALIA, [AND CHINA v. BRITISH INDIA STEAM NAVIGATION Co., LD.,** [1909] A. C. 369; 78 L. J. P. C. 111; 100 L. T. 661; 25 T. L. R. 480; 53 Sol. Jo. 446; 14 Com. Cas. 189; 11 Asp. M. C. 245—P. C.

**23. Railway Company's Vessel—Unreasonable Conditions—Railway and Canal Traffic Act, 1854** (17 & 18 Vict. c. 31), s. 7—*Railways Clauses Act, 1863* (26 & 27 Vict. c. 92), s. 31.]—A railway company carried on one of their steamers a cargo under a bill of lading, which contained a clause exempting them from liability for every kind of negligence on the part of their servants.

**HELD**—that, in the absence of a *bona fide* alternative rate for the carriage of the cargo, such a condition was void as being unreasonable, within sect. 7 of the Railway and Canal Traffic Act, 1854.

**RIGGALL & SONS v. GREAT CENTRAL Ry. [Co.,** 101 L. T. 392; 25 T. L. R. 754; 53 Sol. Jo. 716; 14 Com. Cas. 259; 11 Asp. M. C. 303—Pickford, J.

**24. Craft Transit—"Vessel"—Barge—Unseaworthiness.**—A bill of lading provided for the shipment of certain goods from London to G., in America, and contained a clause of exceptions which included damage from rain, frost, decay, pilferage, wastage, etc. It also contained exceptions in respect of damage or loss from boilers, etc., and "unseaworthiness, submerging or sinking of ship or admission of water into the vessel . . . unseaworthiness or unfitness of the vessel at commencement of, or before, or at any time during the voyage, perils of the seas, rivers, navigation or land transit of whatever nature or kind, and all damage, loss, or injury arising from the perils or things above mentioned." At the end of the bill of lading were the words: "All the above exceptions and conditions shall apply from the time when the goods come into the possession or custody of the carriers or their agents in warehouse or wharf in course of land or water transit or in any other situation."

In a claim for damages by the shippers in respect of injury caused by the unseaworthiness of a barge in which the cargo was carried:—

**HELD**—that the word "vessel" in the bill of lading applied to the barge, and that, as a matter of construction, the last clause also had application to the barge, and the provision about unseaworthiness effectually protected the shipowners.

Decision of Hamilton, J. (102 L. T. 716; 54 Sol. Jo. 543) affirmed.

**WIENER v. WILSONS AND FURNESS-LEYLAND [LINE, LD.,** 103 L. T. 168; 15 Com. Cas. 294—C. A.

### (e) Freight.

See also VII. (b), *infra*.

**25. Dead Freight — Lien — Unliquidated Damages.**—A lien for dead freight covers a claim for unliquidated damages for short loading.

## V. Carriage of Goods—Continued.

*McLean v. Fleming* (1871) L. R. 2 Sc. & Div. 128 followed; *Gray v. Carr* (1871) L. T. 6 Q. B. 522) not followed.

*Kish v. TAYLOR*, [1910] 2 K. B. 309; 79 L. J. [K. B. 1113; 102 L. T. 910; 26 T. L. R. 504; 54 Sol. Jo. 565; 15 Com. Cas. 268—Walton, J.

See S. C. on appeal, No. 16, *supra*.

**25A. Contract to Pay Freight per Standard Intaken—Cargo not Measured at Port of Loading.**—A charter-party of a steamer to carry a cargo of short props from Riga to Grangemouth Dock provided that freight should be payable "for short props 19s. per Gothenburg standard intaken." A cargo was loaded at Riga and the master granted a bill of lading which bore that the cargo shipped measured 642.093 standards. In an action for freight at the instance of the shipowner against the indorsee of the bill of lading, it was not proved that the cargo was measured at Riga. The cargo was measured at Grangemouth, and was found to measure 534.36 standards. It was not averred that any part of the cargo was lost on the voyage.

**HELD**—(1) that under the charter-party freight was payable on the cargo shipped, and in accordance with the measurement at the port of loading if the cargo were in fact measured there, but (2) that as it was not proved that the cargo was measured at Riga, freight was payable in accordance with the measurement at Grangemouth.

*NEW LINE STEAMSHIP CO., LD. v. BRYSON & CO.*, [1910] S. C. 409; 47 Sc. L. R. 346—Ct. of Sess.

## (f) Miscellaneous.

**26. Lightermen—Contract—"Reasonable Precautions"—Exemption from "Any Loss or Damage, including Negligence, which can be Covered by Insurance"—Negligence and Liability of Lightermen.**—The defendants, who were lightermen, agreed with the plaintiffs to transship a cargo of rosin from one ship to another on the terms that "every reasonable precaution is taken for the safety of the goods whilst in craft," and that they (the defendants) "will not be liable for any loss or damage, including negligence, which can be covered by insurance, and the shipper in taking out the policy should effect same without recourse to lighterman" as the defendants "do not accept responsibility for insurable risks." Portions of the cargo were lost and damaged through the negligence of the defendants.

**HELD** (Lord Collins dissenting)—that the defendants had expressly and without ambiguity protected themselves from liability.

Decision of C. A. (101 L. T. 56; 25 T. L. R. 687; 14 Com. Cas. 247; 11 Asp. M. C. 260) affirmed.

*ROSIN AND TURPENTINE IMPORT CO., LD. v. [B. JACOBS & SONS, LD.]*, 102 L. T. 81; 26 T. L. R. 259; 54 Sol. Jo. 268; 15 Com. Cas. 111; 11 Asp. M. C. 363—H. L.

**27. Berth Note—Arbitration Clause—"Dispute"—"Arising at Loading Ports"—Stay of Proceedings—Arbitration Act, 1889 (52 & 53 Vict.**

c. 49), s. 4.]—The plaintiffs sent their steamship to load grain at a port in the Sea of Azof in accordance with a berth note under which the freighters were to act as agents for the ship and do the stevedoring at a fixed rate per 1,000 chetwerts. The berth note provided that "in case of any dispute arising at loading ports" it was "to be submitted to the Rostoff-on-Don Bourse Court of Arbitration." The steamship was loaded, and an account for stevedoring was submitted to the master, who signed it, the amount being deducted from the advance freight due to the shipowners. A copy of the account was then sent to the shipowners with the balance of the advance freight. The shipowners complained to the freighters in London that the stevedoring rate as shown in the account was not reckoned in the customary way, and brought an action in the county court to recover the amount which they alleged was an overcharge and which had been deducted from the advance freight. The freighters moved for and obtained a stay of the proceedings in the county court on the ground that the dispute was within the submission to the arbitration clause in the berth note.

**HELD**—that "dispute" meant matter in dispute, and, as it arose at the loading port, the matter should be referred to arbitration, and that the proceedings were rightly stayed.

*THE "DAWLISH,"* [1910] P. 339; 79 L. J. P. 111; [103 L. T. 315—Div. Ct.]

## (g) Short Delivery.

See No. 25, *supra*.

## (h) Through Bill of Lading.

[No paragraphs in this vol. of the Digest.]

## (i) Warranties.

**28. Seaworthiness—Dangerous and Unusual Fitting—Character not Known to Persons Using it.**—A vessel is unseaworthy if it is fitted with an unusual and dangerous fitting, which will permit of water passing from the sea into her holds unless special care is used, and if those who have to use the fitting in the ordinary course of navigation have no intimation or knowledge of its unusual and dangerous character, or of the need for the exercise of special care, and might, as engineers of the ship, reasonably assume and act upon the assumption that the fitting was of the ordinary and proper character which would not permit of water so passing however the fitting was used.

*ABRAM LYLE & SONS v. OWNERS OF SS. ["SCHWAN"]*; *THE "SCHWAN,"* [1909] A. C. 450; 78 L. J. P. 112; 101 L. T. 289; 25 T. L. R. 742; 53 Sol. Jo. 696; 11 Asp. M. C. 286; 47 Sc. L. R. 558—H. L.

See S. C. No. 21, *supra*.

**29. Seaworthiness—Burdens of Proof—General Average—Pumping Power—Cast-Iron Cunnings—Outlays in Port of Refuge—York-Antwerp Rules, 1890, 10 and 11.**—A steamship, built in 1872, sailed from Libau for Leith with a general cargo, but between one-and-a-half and three

### V. Carriage of Goods—Continued.

hours out she broke down owing to a fracture of a valve casing of the feed-pumps. The engineer, under an erroneous belief that both feed-pumps would be affected, reported that the vessel could only proceed by using the donkey pump to supply salt water, but that this could be done in safety while within the Baltic. The donkey pump could have been connected with the hot well so as to have supplied fresh water. The master resolved to proceed to Elsinore for repairs. The vessel met with bad weather. The ventilator coamings, which were of cast-iron and not of malleable iron as required by the Board of Trade regulations (issued subsequent to 1872), were broken, and some sea water got in and damaged part of the cargo. At Elsinore certain general average expenditure was incurred. There was no evidence that the fracture of the valve casing was due to any defect, latent or otherwise. In a claim for general average by the shipowners against the cargo owners:—

HELD—(1) that the *onus* of proving unseaworthiness was on the cargo owners, pleading it; (2) that it had not been proved as to either (a) the pumping power, for even if there had been a defect proved in the valve casing there remained sufficient pumping power for the vessel, or (b) the coamings, for the subsequent issue of the Board of Trade regulations did not make all vessels then existing with cast-iron coamings unseaworthy; (3) that any unseaworthiness proved was due to the unnecessary use of salt water through the error of the engineer, which error was excepted by the bill of lading; (4) that general average was due, the vessel having been in a disabled condition.

KLEIN v. LINDSAY, [1910] S. C. 231; 47 Sc. L. R. [177—Ct. of Sess.]

### VI. DEMURRAGE.

See also No. 14, *supra*, Nos. 36, 58, *infra*.

#### (a) Averaging Days.

30. "*Clear Working Day of 24 Hours*"—"Day"—*Exceptions*—"Interventions of Sanitary, Customs, and other Constituted Authorities."—By a charter-party the cargo was "to be shipped at the rate of 500 tons per clear working day of 24 hours (weather permitting), Sundays and holidays always excepted; and to be discharged at 500 tons per like day (except in the case of . . . interventions of sanitary, customs, and other constituted authorities, or any cause beyond the personal control of shipper, charterer, or consignees, which may hinder the loading or discharge of the said vessel. . . . In case charterers can arrange to load or discharge ship on Sundays or holidays, captain to allow work to be done, half such time actually used to count. Days to be averaged over all voyages performed under and during the entire currency of this charter to avoid demurrage. . . . Time not to count at port of loading and discharge between the hours of 1 p.m. on Saturdays and 7 a.m. on Mondays. Ship to work day and night, if requested to do so, and to give use of cranes and winches with necessary steam power and hands,

paying all extra expenses. . . . A commission of 2½ per cent. on estimated gross amount of freight, dead freight, and demurrage is due to S. on loading, ship lost or not lost. . . . All accounts and any difference or disputes in regard to loading and discharging of the vessel are to be settled at the loading and discharging ports respectively. Charterers' liability in every respect, and as to all matters and things, ceasing on completion of loading. Captains and owners to have a lien on the cargo for all freight, dead freight, and demurrage due under this charter which they are hereby bound to exercise." At M., the port of loading, the working day was 10½ hours.

HELD—(1) that under the charter-party a "day" was not a calendar day, but a conventional day; (2) that the vessel's right to demurrage at M. must be determined according to the number of days occupied there in loading, although the charterers would be entitled to abate the amount of such demurrage by taking credit for any time saved at the port of discharge; and (3) that the act of the railway company owning the wharf at M. in allowing another vessel to get to a berth before the chartered vessel was not an intervention of a "constituted authority" within the meaning of the charter-party.

*Forest Steamship Co. v. Iberian Iron Ore Co.* (1900), 5 Com. Cas. 83) applied.

WATSON BROTHERS SHIPPING CO., LD. v. [MYSORE MANGANESE CO., LD., 102 L. T. 169; 26 T. L. R. 221; 54 Sol. Jo. 234; 15 Com. Cas. 159; 11 Asp. M. C. 364—Hamilton, J.]

#### (b) Colliery Guarantee.

31. *Incorporation in Charter-party—Exceptions*—"Any other cause beyond my control"—*Ejusdem generis*.—By a charter-party the plaintiff chartered the defendants' ship the *Aldgate* to proceed to Hull (Alexandra Dock) and there to take on board a cargo of coals "to be loaded in 120 hours on condition of usual colliery guarantee." The colliery guarantee contained the following clause:—"Sundays, Saturdays, Bank Holidays, cavilling days, and colliery holidays excepted. Time not to count until after the said steamer is wholly unballasted and ready in dock to receive her entire cargo, strikes of pitmen or workmen, frosts or storms, and delays at spouts caused by stormy weather, and any accidents stopping the working, leading, or shipping of the said cargo, also restrictions or suspensions of labour, lock-outs, delay on the part of the railway company either in supplying wagons or leading the coals, or any other cause beyond my control, such stoppage occurring any time between the present date and actual completion of loading always excepted." The *Aldgate* arrived in the Alexandra Dock, Hull, and gave notice of readiness to load by 9 a.m. on July 23rd, 1907. Owing, however, to the large number of ships which were waiting to load in turn before the *Aldgate*, she did not get to a berth under a tip until midnight, August 1st.

HELD, that the *Aldgate* was an arrived ship when she arrived in the dock and gave her notice of readiness to load on July 23rd at

## VI. Demurrage—Continued.

9 a.m., and that the lay hours then commenced to run; that the exception in the colliery guarantee of "any other cause beyond my control" must be read *ejusdem generis* with the words that preceded them, and that the exception did not prevent the lay hours running against the plaintiff.

*Monsen v. Macfarlane* ([1895] 2 Q. B. 562) and *In re Richardsons and Samuel* ([1898] 1 Q. B. 261) followed. *Larsen v. Sylvester* ([1908] A. C. 295) distinguished.

*THORMAN v. DOWGATE STEAMSHIP CO. LD.*  
[1910] 1 K. B. 410; 79 L. J. K. B. 287; 102 L. T. 242; 15 Com. Cas. 67—Hamilton, J.

## (c) Commencement of Lay Days.

[No paragraphs in this vol. of the Digest.]

## (d) Computation of Time.

See No. 30, *supra*.

## (e) Custom of Port.

See also No. 30, *supra*.

**32. Custom of Port for Discharge to be Done by Harbour Authority—Delay in Discharging—Liability of Charterers.**—By the terms of a charterparty a cargo of pitprops was to be discharged with the customary steamship despatch as fast as the steamer could deliver during the ordinary working hours of the port, and it was provided that "should the steamer be detained beyond the time stipulated as above for discharging, demurrage shall be at 4d. per N.T.R. per day and *pro rata* for any part thereof." By the custom of the port the discharge of cargoes of pitprops was done by the harbour authority, and not by any stevedores to be named by the receivers of the cargo.

**HELD**—that the charterers were not liable for demurrage in respect of the detention of the vessel due to delay on the part of the harbour authority in discharging, the circumstances leading to the delay not being brought about by the charterers.

*Weir v. Richardson* ((1897) 3 Com. Cas. 20) followed.

*THE KINGSLAND*, [1911] P. 17; 27 T. L. R. 75

[—Div. Ct.]

## (f) Excepted Days.

See No. 30, *supra*.

## (g) Exceptions of Strikes, etc.

See No. 30, *supra*.

## (h) Miscellaneous.

**33. Expiration of Lay-Days—Full Cargo not Loaded.**—Where a charter-party provides for demurrage, but not for any fixed time, it is the duty of the ship, if she has not loaded her full cargo within the time allowed, to wait a reasonable time longer for further cargo.

*WILSON & COVENTRY, LD. v. OTTO THORESEN'S LINE*, 79 L. J. K. B. 1048; 103 L. T. 112; 26 T. L. R. 546; 54 Sol. Jo. 655; 15 Com. Cas. 262—Bray, J.

## VII. MARITIME LIENS.

## (a) Generally.

[No paragraphs in this vol. of the Digest.]

## (b) Owner's Lien.

**34. Bill of Lading—Unsatisfied Freight Due by Limited Company—Further Shipment by Receiver and Manager of Company—Right of Shipowners to Exercise Lien as Against Receiver and Manager.**—For a number of years prior to 1909, I., C. and Co. had shipped beer to Malta to their agents for sale there by the defendants' line under bills of lading which contained a clause giving the shipowners a lien on the goods shipped not only for the freight due thereon, but also in respect of any previously unsatisfied freight due from shippers or consignees. In January, 1909, the plaintiff was appointed receiver and manager of I., C. and Co., and shortly thereafter shipping instructions were sent to the defendants in the following terms:—"Please deliver ale as below charging to yours respectfully, Ind, Coope, and Co. By Arthur F. Whinney, Receiver and Manager, C.C.C." The address given for delivery of the ale was "Ind, Coope, and Co. (Limited), care of Turnbull, junr., and Somerville, Strada Reale, Valetta, Malta."

In the defendants' reply thereto the amount of freight for the particular shipment was stated, and a bill of lading was sent in the same form as in previous shipments. The beer in question was shipped under that bill of lading. The defendants claimed to exercise a lien upon this particular shipment for unpaid freight in respect of previous shipments by I., C. and Co.

**HELD** (Moulton, L.J. dissenting)—that the defendants were not entitled to exercise a lien for the previously unsatisfied freight, inasmuch as (1) the shippers and consignees of the particular consignment were not the mortgagor company by whom the previously unsatisfied freight was due, but by the mortgagees acting by their receiver and manager; and (2) the plaintiff as receiver, could not without the leave of the Court—which had not been obtained—bind the debenture-holders by creating in favour of the defendants any lien by contract extending to the unsatisfied debt of the mortgagor company.

Decision of Hamilton, J. (102 L. T. 177; 26 T. L. R. 272; 54 Sol. Jo. 291; 15 Com. Cas. 114; 11 Asp. M. C. 381) reversed.

*WHINNEY v. MOSS STEAMSHIP CO., LD.*, [1910] 2 K. B. 813; 79 L. J. K. B. 1038; 103 L. T. 344; 26 T. L. R. 650; 54 Sol. Jo. 736; 15 Com. Cas. 316—C. A.

**35. "Dead Freight"—Unliquidated Damages.**—A lien for "dead freight" covers a claim for unliquidated damages for short loading.

*McLean v. Fleming* ((1871) L. R. 2 Sc. & Div. 128) followed; *Gray v. Carr* ((1871) L. R. 6 Q. B. 522) not followed.

*KISH v. TAYLOR*, [1910] 2 K. B. 309; 79 L. J. K. B. 1113; 102 L. T. 910; 26 T. L. R. 504; 54 Sol. Jo. 565; 15 Com. Cas. 268—Walton, J.

See S. C., on appeal, No. 16, *supra*.



## VII. Maritime Liens—(Continued).

36. *Lien Provided by Charter-party—Demurrage—Charges.*—A charter-party provided that "the owner or master of the vessel shall have an absolute lien and charge upon the cargo and goods laden on board for the recovery and payment of all freight, demurrage, and all other charges whatsoever."

HELD—that as against an indorsee of the bill of lading (which provided that he should pay freight and perform all other conditions as per charter-party) the words "all other charges whatsoever" could not be read as including expenses incurred by arrangement between shipowner and charterer outside any charter-party obligation.

HELD ALSO—that demurrage payable day by day may be subject to a lien.

Decision of Bray, J. ([1909] 1 K. B. 948; 78 L. J. K. B. 534; 100 L. T. 513; 25 T. L. R. 396; 53 Sol. Jo. 358; 14 Com. Cas. 99; 11 Asp. M. C. 232) varied.

RREDERIAKTIESELSKABET "SUPERIOR" v. DEWAR AND WEBB. [1909] 2 K. B. 998; 78 L. J. K. B. 1100; 101 L. T. 371; 25 T. L. R. 821; 14 Com. Cas. 320; 11 Asp. M. C. 295—C. A.

## VIII. BOTTOMRY.

[No paragraphs in this vol. of the Digest.]

## IX. GENERAL AVERAGE.

37. *Exemption in Bill of Lading from Consequence of Negligence of Crew—Effect on Claim for General Average.*—Where a contract for the carriage of goods by sea contains a clause exempting the shipowner from the consequences of the negligence of the master and crew, the shipowner is entitled to a contribution from the owners of the goods to general average expenses although the necessity for the same has been occasioned by the negligence of one of the crew.

The "Carron Park" ((1890) 15 P. D. 203) and *Milburn & Co. v. Jamaica Fruit Importing and Trading Co. of London* ([1900] 2 Q. B. 540) followed.

KLEIN v. LINDSAY, [1910] S. C. 231; 47 Sc. L. R. [177—Ct. of Sess.

38. *Particular Average Charges—Duty of Master to Communicate with Cargo-Owners—Liability of Cargo-Owners.*—A vessel put into a port of refuge. The master, who did not know who the cargo-owners were, communicated with the only firm who to his knowledge had acted for the shippers at the port of loading, and they referred him to Lloyd's agent. He advised a survey. The surveyor recommended the discharging of the portion of the cargo, oats and linseed, affected by sea-water, its re-conditioning and re-shipping. This was done, involving considerable expense, and as things turned out, it would have been better to have saved the delay and left the cargo alone. The cargo-owners had taken no steps to prevent the discharge. The damaged condition of the cargo would not have endangered the vessel.

HELD—(1) that the cargo-owners were liable for the charges incurred in unloading, re-con-

ditioning, and re-loading, and (2) were not entitled to have them included in general average.

KLEIN v. LINDSAY, [1910] S. C. 231; 47 Sc. L. R. [177—Ct. of Sess.

See also S. C. No. 29, *supra*.

## X. RULES FOR PREVENTING COLLISIONS.

## (a) Fog.

39. *Failure to Hear Sound Signals—Proof of Negligence—Inevitable Accident.*—A vessel in charge of a compulsory pilot, having run into a fog, was rounding under a port helm to come to an anchor when she collided with a vessel lying at anchor whose bell was being regularly sounded for the fog. The bell of the vessel at anchor was not heard by those on the vessel coming to anchor until just before the collision.

HELD—that neither the pilot nor the crew of the vessel coming to anchor were negligent in not hearing the bell of the vessel at anchor, and that, as the plaintiffs had failed to prove any negligence on the part of the defendants, the action must be dismissed.

THE "NADOR," [1909] P. 300; 78 L. J. P. 106; [100 L. T. 1007; 11 Asp. M. C. 283—Bigham, Pres.

40. *Failure to Hear Sound Signals—Bad Look-out—Regulations for Preventing Collisions at Sea, 1897, art. 29.*—Two steam vessels, one the *C.* and the other the *I. B.*, came into collision in a thick fog. The *I. B.* on hearing the whistle of the other stopped her engines, and continued to sound her whistle regularly in accordance with the regulations. Those on the *C.* only heard the whistle of the *I. B.* once before she came into sight at a very short distance. In a damage action both vessels were held to blame, the *I. B.* for proceeding at an immoderate speed, the *C.* for bad look-out in not hearing the whistles of the other. The owners of the *C.* appealed, alleging that the look-out on their vessel was good and that the fog prevented them from hearing the whistle signals.

HELD—that the case made by the appellants that the whistle which was being regularly sounded on the *I. B.* could not be heard by reason of the fog was so improbable that the correct inference to draw from the facts was that those on the *C.* could not have been keeping a good look-out, and that their vessel was rightly held to be partly in fault for the collision.

Decision of Deane, J., affirmed.

THE "CURRAN," [1910] P. 184; 79 L. J. P. 83; [102 L. T. 640—C. A.

## (b) Generally.

41. *Steam Trawler—"Proceeding" Vessel—Regulations for Preventing Collisions at Sea, art. 20.*—A steam trawler, which, by reason of the fact that she is engaged in the operation of hauling in her trawl, is stationary and, until her trawl is up, is practically immovable, cannot be said to be "proceeding" within the meaning of art. 20 of the Regulations for Preventing

### X. Rules for Preventing Collisions—Continued.

Collisions at Sea so as to cast upon her the duty of keeping out of the way of a sailing vessel.

*The Jennie S. Barker* ((1875) 4 A. & E. 456) distinguished. *The Tweeddale* ((1889) 14 P. D. 164) applied.

THE "GLADYS," [1910] P. 13; 79 L. J. P. 5; 101 [L. T. 720; 26 T. L. R. 66; 11 Asp. M. C. 352—Bigham, Pres.

42. *River Thames—Overtaken Vessel—Duty to Keep Course—Overtaking Vessel—Duty to Keep Clear—Duty of Vessels Going Down River to Keep to the South of Mid-stream.*—Two steamships, both proceeding down the Thames, collided in Galleons Reach somewhere between mid-river and the northern bank. Both vessels were held to blame: the overtaking vessel for not keeping clear of the overtaken vessel and the overtaken vessel for not keeping her course.

*Semble*, vessels going down river should keep to the south of mid-stream.

THE "GERE," [1909] P. 287; 78 L. J. P. 130; 100 [L. T. 620; 11 Asp. M. C. 243—Deane, J.

43. *Navigation of Goole Reach, River Ouse—Collision—Both Vessels to Blame—Whistle Signals—Bye-laws for the Navigation of the River Ouse, 1886, arts. 15, 16, 18, 19, 27, 28, and 1908, art. 1—Regulations for Preventing Collisions at Sea, 1897, arts. 28, 30.*—A steamship proceeding up the river Ouse on a flood tide of the force of about five knots neglected to swing head to tide before entering Goole Reach, and so had to continue up the river at about eight knots over the ground, and collided with a steamship proceeding down the river. The steamship proceeding down river shortly before the collision starboarded her helm, as she alleged, to avoid colliding with a stone wall, which lay on her starboard-hand side of the river, but she sounded no whistle signal.

HELD—that both vessels were to blame for the collision, as they were both guilty of negligence which contributed to cause it: the steamship proceeding up river for not swinging head to tide and dredging up stream stern first, and so proceeding at an excessive speed; the steamship proceeding down river for starboarded her helm and not sounding a whistle signal.

Decision of Bigham, Pres., affirmed.

THE "FRANKFORT," [1910] P. 50; 79 L. J. P. 49; 101 L. T. 664; 11 Asp. M. C. 326—C. A.

#### (c) Lights.

*See* Nos. 49, 50, 54, *infra*.

#### (d) Narrow Channel.

44. *Firth of Forth—Regulations for Preventing Collisions at Sea, 1897, art. 25.*—The Firth of Forth from the Forth Bridge upwards is a narrow channel in the sense of art. 25 of the Regulations for Preventing Collisions at Sea, 1897.

Decision of Ct. of Sess. ([1909] S. C. 561; 46 Sc. L. R. 338) affirmed.

SCREW COLLIER CO. v. WEBSTER, OR KERR, [1910] A. C. 165; 79 L. J. P. C. 57; [1910] S. C. (H. L.) 25; 47 Sc. L. R. 99—H. L. (Sc.)

### 45. *Signal Not Answered—Duty to Stop.*—

When two steamships are meeting in a narrow channel and one whistles to indicate that she is altering her course, and the other does not answer the signal, but appears to be acting in accordance with the rule of the road, the former vessel is justified in proceeding on her course cautiously at a moderate speed, and will not be held partially to blame for a collision which occurred from the fault of the other vessel because she did not stop altogether when she got no answer to her signal.

Decision of Supreme Court for China and Corea reversed.

CHINA NAVIGATION CO., LD. v. ASIATIC [PETROLEUM CO., LD., AND THE TAKU TUG AND LIGHTERAGE CO., LD.: THE "TIENTSIN," [1910] A. C. 204; 101 L. T. 547; 11 Asp. M. C. 245; 47 Sc. L. R. 587, *sub nom.* THE "TIENTSIN," 79 L. J. P. C. 65—P. C.

#### (e) Negligence.

*See* Nos. 39, 40, *supra*; No. 76, *infra*.

#### (f) Sound Signals.

*See also* Nos. 39, 40, 43, 45, *supra*.

46. *Breach of Regulations—Contributing to Collision—Regulations for Preventing Collisions at Sea, arts. 18, 28.*—Two steamships, *The Malin Head* and *The Corinthian*, approaching each other end on, or nearly end on, collided. Five minutes before the collision occurred *The Malin Head* was seen by those on board *The Corinthian* to be porting. When *The Malin Head* first ported she sounded one short blast, and then steadied and shortly afterwards hard-a-ported, but did not sound her whistle.

Deane, J., held that *The Corinthian* was alone to blame.

HELD—that *The Malin Head* was guilty of a breach of the conditions contained in art. 28 of the Regulations for Preventing Collisions at Sea in failing to sound a short blast when she hard-a-ported, and that, as it was impossible to say that such infringement of art. 28 could not by any possibility have contributed to the collision, *The Malin Head* was also to blame.

*The Bellanoch* ([1907] A. C. 269) has not altered or modified the rule laid down in *The Duke of Buccleuch* ([1891] A. C. 310).

Decision of Deane, J. (100 L. T. 411; 25 T. L. R. 330; 11 Asp. M. C. 208) varied.

THE "CORINTHIAN," [1909] P. 260; 78 L. J. P. [121; 101 L. T. 265; 25 T. L. R. 693; 53 Sol. Jo. 650; 11 Asp. M. C. 264—C. A.

47. *Whistle Signals—Directing a Course—Regulations for Preventing Collisions at Sea, art. 28.*—Two steam vessels, one on a course of S.W.  $\frac{1}{2}$  S., the other on a course of N.E.  $\frac{3}{4}$  N., came into collision. Those on the vessel on the S.W.  $\frac{1}{2}$  S. course shortly before the collision reversed their engines and sounded three short blasts on their whistle. As the action of her reversed engines caused the head of their vessel to fall off to starboard they hard-a-ported their helm as the best

### X. Rules for Preventing Collisions—Continued.

manceuvre under the circumstances to keep their head as straight as possible, but they did not sound the one-blast signal mentioned in art. 28 of the Collision Regulations, 1897. In a damage action those on the vessel on the N.E.  $\frac{3}{4}$  N. course alleged that those on the vessel on the S.W.  $\frac{1}{4}$  S. course were to blame for not sounding one blast when they hard-a-ported their helm.

**HELD**—that they were not to blame for not sounding the one-blast signal, for they were not directing their course to starboard within the meaning of the rule.

**THE "ABERDONIAN,"** [1910] P. 225; 79 L. J. P. 89; 102 L. T. 543; 11 Asp. M. C. 393—Deane, J.

#### (g) Tug and Tow.

**48. Negligence of Tug—Duty of Tug to set Course—Duty of Tow to follow Tug.**—A hopper barge, which had a rudder but no motive power, when in tow of a tug came into collision with a lightship. The owners of the lightship brought an action against the owners of the tug and the owners of the tow for the damage they had sustained, alleging negligence in both tug and tow. Bigham, Pres., held that both tug and tow were to blame for the collision: the tug for not keeping more to that side of the channel which lay on her starboard side, the tow for not porting her helm sooner than she did to counteract the negligent course set by the tug. He also held that the contract of towage between the tug and tow which made those on the tug the servants of the tow owners did not touch the liability of the owners of the tug and tow to third parties. The owners of the hopper barge appealed.

**HELD**—that those on the hopper barge were not guilty of negligence in failing to port sooner than they did, as they were entitled to assume that those on the tug who were responsible for the navigation would set such a course as would take the hopper barge safely past the lightship, and they were not bound to act as though those on the tug would be negligent.

Decision of Bigham, Pres., varied.

**THE "W. H. No. 1" AND THE "KNIGHT [ERRANT],"** [1910] P. 199; 79 L. J. P. 61; 102 L. T. 643—C. A.

Affirmed on appeal—*Sub nom.* **OWNERS OF LIGHTSHIP "COMET" v. OWNERS OF HOPPER BARGE "H. No. 1,"** [1910] W. N. 274; 130 L. T. Jo. 151—H. L.

#### (h) Vessels Crossing.

**49. Steamship—Sailing Trawler—Engaged in Trawling—Duty to Show White Flare-up Light—Duty to Keep Clear—Regulations for Preventing Collisions at Sea, 1897, arts. 2, 5, 9 (d) (2), 20, 21, 23.**—A dandy-rigged trawler smack, heading S.S.E., exhibiting a white light in a lantern in accordance with art. 9 (d) (2) of the Collision Regulations, was lying stationary while those on board her were engaged in hauling the trawl. The trawl was almost on board, the cod end of it being awash, when those on the trawler saw a steamship, which had been seen approaching for some time before, about three

hundred yards away to the north-east. Those on the smack showed a white flare-up light, but the steamship, which was proceeding about eight and a half knots on a course of S.W. by W.  $\frac{1}{2}$  W., with her stem struck the port side of the smack, causing her to sink. In a damage action brought by the owners of the smack against the owners of the trawler:—

**HELD**—that the smack was engaged in trawling within the meaning of art. 9 (d) (2) of the Collision Regulations, and as she had a white lantern exhibited and showed a white flare-up light in accordance with that article, she was not to blame for the collision.

**HELD FURTHER**—that it was the duty of the steamship to keep out of the way of the smack, and that she was alone to blame for keeping a bad look-out.

**THE "PICTON,"** [1910] P. 46; 79 L. J. P. 53; [101 L. T. 917; 11 Asp. M. C. 358—Bigham, Pres.

**50. Steamship—Steam Trawler Trawling—Obligation to Show Triplex Light—Duty of Steamship to Give Way—Regulations for Preventing Collisions at Sea—Arts. 9 (d) (1), 19, 21, and 27.**—A steam trawler engaged in trawling, and showing the triplex light mentioned in art. 9 (d) (1), sighted the red side light of a steam vessel on her starboard side. The steam vessel kept her course and speed and collided with and sank the trawler, which had kept her course and speed until shortly before the collision, when she had stopped her engines.

In a damage action brought by the owners of the steam trawler against the owners of the steamship, the steamship was held alone to blame for keeping a bad look-out, and it was held that art. 19 did not apply to a steam trawler while engaged in trawling. The owners of the steamship, while admitting that they were partly to blame, appealed, alleging that the steam trawler was also to blame because she had enough way on to be under command, and so should have kept out of the way of a vessel approaching her on her starboard hand in accordance with art. 19.

**HELD**—that the steamship was alone to blame, for steamships were bound to keep clear of and give way to steam trawlers engaged in trawling and exhibiting the triplex light mentioned in art. 9 (d) (1).

Decision of Deane J., affirmed.

**The Craigellachie,** ([1909] P. 1) disapproved.

**The Tweeddale** (1889) 14 P. D. 165 approved.

**THE "GROVEHURST,"** [1910] P. 316; 79 L. J. P. 124; 103 L. T. 239—C. A.

**51. Taking up Pilot—Act Done in Course of Navigation—Course and Speed—Regulations for Preventing Collisions at Sea, 1897, arts. 19, 21, 22, 29.**—Two steamships were approaching a pilot cutter in such circumstances that the collision regulations as to crossing steam vessels applied to them. The steam vessel whose duty it was to keep her course and speed under art. 21 as she approached the pilot cutter slackened her speed and then stopped her engines in order to pick up a pilot, but before

**X. Rules for Preventing Collisions—Continued.** she could do this a collision between the two vessels occurred.

**HELD**—that the vessel whose duty it was to keep her course and speed was not to blame for the collision, for a steam vessel is entitled to alter her course and speed even though art. 21 of the Collision Regulations applies to her if such alteration is made in the ordinary and proper course of her navigation.

**THE "ROANOKE,"** [1908] P. 231; 77 L. J. P. [115; 99 L. T. 78; 24 T. L. R. 526; 52 Sol. Jo. 426; 11 Asp. M. C. 253—C. A.

**52. Vessel Keeping Course and Speed—Altering Course Too Late to Avoid Collision—Regulations for Preventing Collisions at Sea, 1897, art. 21.]**—Under art. 21 of the Regulations for Preventing Collisions at Sea, one of two vessels crossing has to keep her course and speed, unless and until a collision cannot be avoided by the action of the other vessel alone; but the failure to alter her course at the precise moment required should not be too severely pressed against the keeping-course vessel.

**THE "RANZA" (1898),** 79 L. J. P. 21 (n).—[Barnes, J.

**53. Vessel Keeping Course and Speed—Keeping Speed Too Long—Regulations for Preventing Collisions at Sea, 1897, art. 21.]**—Circumstances in which a vessel keeping her course and speed under art. 21 of the Regulations for Preventing Collisions at Sea was held to have kept her speed too long and therefore also to blame for the collision which resulted.

**THE "ORNEN" (1900),** 79 L. J. P. 23 (n).—C. A.

**54. Steam Drifter—Drifter unable to Manœuvre by Reason of her Nets—Lights—Regulations for Preventing Collisions at Sea, arts. 9, 20, 27.]**—At the time of a collision which occurred between the *Z.*, a sailing drift-net fishing vessel, and the *P.*, a steam drift-net fishing vessel, the *Z.* was under way towards her fishing ground, and the *P.* was then, and had for some time been, engaged in shooting her nets. The *P.*'s engines had been stopped, but she had her steam on and her engines ready; her speed then was about one knot. She carried the two white lights prescribed by art. 9 (b), but not in the direction prescribed by that article. Immediately before the collision the master of the *P.*, seeing that the *Z.* was keeping her course and speed—about four knots—ordered his engines full speed astern, but after a few revolutions the propeller became fouled with the nets and was absolutely stopped.

**HELD**—that as the *P.* could not manœuvre under steam, by reason of her nets, without fouling her propeller, she was not bound by art. 20 to keep out of the way; that there were "special circumstances" within art. 27 which authorised a departure from art. 20 assuming it otherwise applied; that the direction of the *P.*'s lights, although wrong, could not by any possibility have caused or contributed to the collision;

and that as the *Z.* ought to have kept out of the way, she was solely to blame.

**THE "PITGAIVENY,"** [1910] P. 215; 79 L. J. P. [65; 103 L. T. 47; 26 T. L. R. 473—Evans, Pres.

**55. Vessel keeping Course and Speed—Altering Course too Late to Avoid Collision—Regulations for Preventing Collisions at Sea, 1897, arts. 19, 21, 27, 29.]**—The *S.* and the *I.* were approaching one another so as to involve risk of collision. Under art. 19 of the Regulations for Preventing Collisions at Sea, the *S.* was the vessel to keep out of the way of the other. The *S.* executed no manœuvre which would keep her out of the way of the *I.* The *I.* kept on her course till the *S.* was within one and a half ships' lengths from her, and then ported her helm to ease the impact of the shock. It was admitted that the *S.* was in fault, but it was contended that under the note to art. 21, and arts. 27, 29, the *I.* was also at fault, inasmuch as she failed to take action to avert the collision.

**HELD**—that the collision was caused solely by the fault of the *S.*

**BEUCKER v. ABERDEEN STEAM TRAWLING AND [FISHING CO., LD.,** [1910] S. C. 655; 47 Sc. L. R. 513—Ct. of Sess.

## XI. COLLISION ACTIONS.

See also DEPENDENCIES, No. 7.

### (a) Division of Loss.

**56. Both Vessels to Blame—Innocent Cargo Owners—Damages Recoverable.]**—The Admiralty rule as to division of loss where both ships which have been in collision are in fault, precluding the owners of cargo laden on one of the ships from recovering more than half their loss from the owners of the other ship, is a rule "hitherto in force in the Court of Admiralty" within the meaning of sect. 25 (9) of the Judicature Act, 1873, and accordingly prevails over any contrary common law rule.

*The Milan* (1861) Lush. 388) followed.

Decision of C. A. (*sub nom.* **THE "DRUMLANRIG,"** [1910] P. 249; 79 L. J. P. 100; 103 L. T. 359; 26 T. L. R. 578) affirmed.

**OWNERS OF CARGO OF STEAMSHIP "TONGA-RIRO" v. ASTRAL SHIPPING CO., LD. (OWNERS OF STEAMSHIP "DRUMLANRIG")** [1910] W. N. 274; 27 T. L. R. 146; 55 Sol. Jo. 138—H. L.

### (b) Limitation of Liability.

**57. Owners' Actual Fault or Privy—Company as Owner—Agent or Servant—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 59, 503.]**—Sect. 503 of the Merchant Shipping Act, 1894, which enables the owner of a ship to limit his liability for loss or damage where it has occurred without his "actual fault or privy," refers to the actual fault or privy of the owner himself, and not to that of his agent or servant. In the case of a ship owned by a railway company the "owners" are the general body of shareholders, and not the person who is



# XI. Collision Actions—Continued.

registered under sect. 59 of the Act as managing owner or ship's husband.

THE "YARMOUTH," [1909] P. 293; 79 L. J. P. 1; [101 L. T. 714; 25 T. L. R. 746; 11 Asp. M. C. 331—Deane, J.

## (c) Measure of Damages.

See also No. 75, *infra*.

58. *Warship—Loss of Use of—Demurrage.*—The rule that where the owner of a vessel is deprived of its use owing to its being damaged in a collision caused by the fault of another vessel he is entitled to recover for such loss of its use, applies equally where the vessel which has been damaged owing to the fault of another is a warship, and the Government owning it might have wanted to use it during the period necessary for its repair, although in fact it was not required for any purpose.

THE "ASTRAKHAN," [1910] P. 172; 79 L. J. P. [78; 102 L. T. 539; 26 T. L. R. 329; 11 Asp. M. C. 390—Deane, J.

59. *Cost of Repairs—Naval Vessel—Charge for Use of Naval Dock.*—A naval vessel, injured by collision with a steam trawler in the North Sea, proceeded to the Admiralty Dockyard at Chatham and was there repaired. In an action brought by the Admiralty against the owners of the trawler, it was found that the collision was due solely to the fault of the trawler.

HELD—in assessing the damages, that the expenses of transporting, docking, and undocking the vessel, and the charge for the use of the dock, must be calculated in accordance with the ordinary charges prevailing in public and private docks, and irrespective of any special circumstances rendering higher charges necessary in the dockyard where the repairs were actually carried out.

THE ADMIRALTY v. ABERDEEN STEAM TRAWLING AND FISHING CO., LD., [1910] S. C. 553; 47 Sc. L. R. 509—Ct. of Sess.

60. *Vessel Temporarily Repaired at First Port of Call—Cost of Repairs—Compensation for Detention—Loss on Cargo through Postponed Market.*

—A ship injured by collision, caused solely by the fault of the other colliding vessel, was at the orders of her owners only temporarily repaired at the first port of refuge, and sailing thereafter for her home port was permanently repaired there.

HELD—that the damages should be assessed on the same footing as if the vessel had been repaired at the first port of refuge; that compensation for detention during repair fell to be calculated on the basis of her probable profits and not at a demurrage rate; and that no account could be taken of loss of profit on the cargo, that not being a natural and reasonable result of the collision.

BEUCKER v. ABERDEEN STEAM TRAWLING AND FISHING CO., LD., [1910] S. C. 655; 47 Sc. L. R. 513—Ct. of Sess.

61. *Fishing Vessel—Total Loss—Prospective Profits—Joint Adventure—Remoteness.*—A fishing vessel became a total loss in consequence of

a collision. In an action by her owners and crew, who were joint-adventurers:—

HELD—that the claim of the pursuers was not limited to the market value of the ship at the date of her loss, but that they were entitled to recover the profits they would have earned between the date of her loss and the end of the fishing season, if relevantly averred and supported by sufficient evidence.

MAIN v. LEASK, [1910] S. C. 772; 47 Sc. L. R. [660—Ct. of Sess.

## (d) Practice.

62. *Burden of Proof—Obligation to Begin.*—The plaintiffs sued to recover the amount of damage sustained by their vessel by reason of a collision between her and the defendants' vessel. The plaintiffs alleged that the defendants were solely to blame. The defendants denied negligence, and pleaded that the collision was solely caused by the negligent navigation of the plaintiffs' vessel. After the pleadings were closed the defendants admitted that their vessel was partly to blame for the collision.

HELD—that on the pleadings, even taken with the admission by the defendants, the burden of proof was upon the plaintiffs, and therefore the obligation to begin was upon them.

THE "CADEBY," [1909] P. 257; 78 L. J. P. 85; [101 L. T. 48; 25 T. L. R. 630; 11 Asp. M. C. 285—Bigham, Pres.

63. "Vessel"—*Landing-Stage—Preliminary Act—R. S. C., Ord. 19, r. 28; Ord. 72, r. 2; Appendix O.*—A landing-stage is not a "vessel" within the meaning of Ord. 19, r. 28, which directs preliminary acts to be filed in actions for damage by collision between vessels. Any alleged practice in that respect which existed under the Admiralty Court Rules, 1859, has been abrogated by the annulment of those rules by the introductory rule and Appendix O. of the rules of the Supreme Court, 1883, and is not saved by Ord. 72, r. 2.

THE "CRAIGHALL," [1910] P. 207; 79 L. J. P. [73; 103 L. T. 236—C. A.

64. *Preliminary Act—Collisions in River—Fixed Course—Pleading.*—In damage actions resulting from collisions in rivers in which the colliding vessels are on a fixed course as opposed to a course which has to be constantly changed, either the magnetic or the true course, and not the compass course, should be pleaded in the preliminary act.

THE "RIEVAULX ABBEY," 102 L. T. 861—EVANS, [Pres.

## (e) Miscellaneous.

65. *Standing by after Collision—Collision Deemed to be Caused by Vessel Failing to Stand by—"Proof to the Contrary"—Other Vessel Found Alone to Blame—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 422 (2).*—Two vessels, the O. and the I., came into collision. While getting clear, the O. damaged the T. under water so that the latter sank about two hours

### XI. Collision Actions—Continued.

later. The extent of the damage was not known at the time, but the *O.* signalled asking if assistance was required. As she received in reply only long blasts on the whistle, she at once steamed away. In an action for damages the *T.* was held alone to blame. On the question of the *O.*'s failure to stand by :—

**HELD**—that, although the *O.* should have stood by, the finding that the *T.* was alone to blame for the collision was "proof to the contrary" within the meaning of sect. 422, subsect. 2, of the Merchant Shipping Act, 1894, so as to prevent the collision being deemed to have been caused by the wrongful act of the *O.* in accordance with that sub-section.

**THE "TRYST,"** [1909] P. 333; 79 L. J. P. 17; 101 L. T. 716; 11 Asp. M. C. 333—Bigham, Pres.

**66. Rendering Assistance after Collision—Reasonable Cause for Failure—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 422.]**—Where a steam drift-net vessel in her unsuccessful endeavours to avoid a collision had fouled her propeller with her nets and thus rendered herself incapable of steaming, and the sea was too rough to lower a boat :—

**HELD**—that she had rebutted the presumption that she was to blame raised by sect. 422 of the Merchant Shipping Act, 1894.

**THE "PITGAVENTY,"** [1910] P. 215; 79 L. J. P. [65; 103 L. T. 47; 26 T. L. R. 473—Evans, Pres.

See S. C., No. 54, *supra*.

**67. Negligence of Defendants' Servant Causing Collision—Negligence of Plaintiffs' Servant Contributing to Loss—Same Man Acting in Two Capacities—Liability of Defendants.]**—B., a man in the employ of the defendants, so negligently navigated their vessel that a third vessel was forced into collision with the plaintiffs' vessel, causing it to leak. The leak might easily have been stopped, as there was only a very small hole below water; but the vessel gradually filled and got lower in the water, so that a larger hole got below water and the vessel sank thirteen hours after the collision. B. was also employed by the plaintiffs as a watchman to tend their vessel. Soon after the collision he went on to the plaintiffs' vessel and resumed his duty as their watchman, but though he was on the vessel for a great part of the time before she sank, he never discovered anything was wrong with her until about one and a half hours before she sank.

**HELD**—that B. as watchman on the plaintiffs' vessel was negligent in not discovering that the vessel was making water, and that if the discovery had been made the leak could easily have been stopped; that the negligence of B. as watchman contributed to the sinking of the vessel, and the plaintiffs could not recover the damage caused by the sinking of the vessel.

Decision of C. A. ([1910] P. 38; 79 L. J. P. 26; 101 L. T. 704; 11 Asp. M. C. 323) affirmed.  
**THE "EGYPTIAN,"** [1910] W. N. 109; 79 L. J. [P. 57; 102 L. T. 465; 11 Asp. M. C. 388; 47 Sc. L. R. 905—H. L.

**68. Collision Due to Negligence of Two Independent Third Parties—Whether Negligence of One Directly Contributed to Collision.]**—Two vessels in the Clyde, the one proceeding up and the other down the river, found themselves, without any fault on their part, in such a position owing to the original faulty navigation of a tug and flotilla of barges that escape from collision was rendered impossible by the position of a cruiser then in course of construction on the river, and whose stern had been wrongfully projected into the navigable channel. In an action of damages brought by the owners of the colliding vessels against the owners of the tug and the builders of the cruiser :—

**HELD**—that as, but for the wrongful protrusion of the cruiser into the fairway of the river there would not, or at least might not (notwithstanding the original fault of the tug), have been any collision, she (the cruiser) had directly contributed to the accident, and that the builders were liable jointly and severally with the owners of the tug.

**ELLERMAN LINES, LD. v. CLYDE NAVIGATION [TRUSTEES; GLASGOW AND NEWPORT NEWS STEAMSHIP CO., LD. v. CLYDE NAVIGATION TRUSTEES]** [48 Sc. L. R. 44—Ct. of Sess.

### XII. SALVAGE.

#### (a) Agreements for Salvage.

[No paragraphs in this vol. of the Digest.]

#### (b) Apportionment of Award.

**69. Master's Wife—Apprentice.]**—One of the crew on board a vessel, in favour of which an award for salvage services had been made, was the master's wife, who was on the articles as stewardess and was rated at a shilling a month. Another member of the crew was an apprentice in his fourth year.

**HELD**—that in respect of the salvage remuneration payable to the crew, the apprentice was entitled to share as if he were an ordinary seaman, but that the master's wife was not entitled to any share.

**THE "PUNTA LARA,"** 26 T. L. R. 268—Deane, J.

**70. Navigating Officers—Apprentices.]**—In a salvage award to a crew according to rating, the shares of the chief and second mate were directed to be calculated as if they were rated at the same pay as the chief and second engineer, and the shares of apprentices as if they were able seamen.  
**THE "VALKYRIE,"** [1910] W. N. 138—Evans, [Pres.

#### (c) Basis of Valuation.

**71. Principles on which Court Acts—Appeal—Alteration of Amount.]**—In considering what is a proper amount to award as salvage, the Court, in order to encourage the rendering of salvage services, will act generously, and will have regard not only to the market value of the services rendered, but will take into account the value of both ships, the amount of danger to which each is exposed, the delay caused to the salving vessel by reason of the salvage services, and the fact that the salving vessel is undertaking a service in which if she fails, she gets nothing.

## XII. Salvage—Continued.

The Court of Appeal on a review of all the facts reduced a salvage award from £10,000 to £6,000, on the ground that the absence of danger had not been sufficiently recognised by the Court below.

THE "PORT HUNTER," [1910] P. 343; 103 L. T. [550; 26 T. L. R. 610—C. A.]

**72. Award of Total Value of Property Salvaged.**—In an undefended action for salvage remuneration for services rendered to a barque, her cargo, and freight, and to the lives of her crew, the Court awarded to the salvors the total value of the property salvaged.

THE "MERCATOR," 26 T. L. R. 450—Evans, Pres.

## (d) Derelicts.

[No paragraphs in this vol. of the Digest.]

## (e) Generally.

[No paragraphs in this vol. of the Digest.]

## (f) Life Salvage.

[No paragraphs in this vol. of the Digest.]

## (g) Practice.

See also ADMIRALTY. No. 2.

**73. Costs—Conjoined Actions—Tender—Accepted but in Different Proportions by Pursuers.**]

—A. and B., pursuers in conjoined actions for salvage, agreed that a sum of £550, tendered by the common defender, was sufficient remuneration for their services, but accepted the tender in different proportions, viz., A. for £500 and B. for £50. In a proof A. was found entitled to £500, and B. to £50.

HELD (*per* Lord Salvesen)—that B. was liable in the expenses of the proof to A.

WILSON v. RAPP, McLAUCHLAN v. RAPP, [47 Sc. L. R. 257—Outer House, Ct. of Sess.]

## (h) Towage.

**74. Claim by Tug Engaged to Tow—Obligations under Towage Contract.**]

—The Court will carefully scrutinise a claim for salvage by a tug which has been engaged to tow the vessel in respect of which the salvage claim is made. It is essential in the public interest that the towage contract should not be easily set aside, and a salvage service substituted for it. Where a claim for salvage services is put forward by a tug which has been engaged to tow the vessel in respect of which the salvage claim is made and which has stranded while in tow, the burden of proof is upon the tug owners, and, in order to succeed, they must show that they were not wanting in the performance of the obligations resting upon them under the towage contracts and they must also account for the stranding by, showing something like *vis major* or an inevitable accident. The very fact that the tug is unable to tow the vessel is evidence that she was inefficient, or that there was inefficiency or want of care or skill on the part of her master or crew.

THE "MARÉCHAL SUCHET," [1911] P. 1; 26 [T. L. R. 660—Evans, Pres.]

## XIII. TOWAGE CONTRACTS.

**74A. Sufficiency of Towing Gear—Exception Clause.**—The defendants, who were tug owners, undertook to tow the plaintiffs' vessel from Birkenhead to the Canada Dock, Liverpool. The contract of towage contained the following clause:—"The tug owners are not to be responsible for any damage to the ship they have contracted to tow arising from any perils or accidents of the seas, rivers, or navigation, collision, stranding, or arising from towing gear (including consequence of defect therein or damage thereto), and whether the perils or things above mentioned or the loss or injury therefrom be occasioned by the negligence, default, error in judgment of the pilot, master, officers, engineers, crew, or other servants of the tug owners."

HELD—that the above clause did not exempt the defendants in respect of damage to the plaintiffs' ship arising from defects or inefficiency existing in the tug before the towage began.

THE "WEST COCK," [1911] P. 23; 27 T. L. R. [52—Evans, Pres.]

**75. Sinking of Tow by Collision—Right of Tug Owner to Recover from Colliding Vessel for Loss of Towage Remuneration—Remoteness of Damages.**—The plaintiffs' tug was engaged in towing a ship from Antwerp to Port Talbot, under a contract which contained the clause, "Sea towage interrupted by accident to be paid *pro rata* of distance towed." During the towage, the defendant's vessel, by the negligence of those on board, collided with and sank the tow. The tug was uninjured. The plaintiffs sued the defendant to recover the amount of towage remuneration so lost.

HELD—that the damage sustained by the plaintiffs by reason of the towage contract being no longer performable, in consequence of the sinking of the tow, gave the plaintiffs no cause of action against the defendant.

*Cattle v. Stockton Waterworks Co.* ((1875) L. R. 10 Q. B. 453) followed.

LA SOCIÉTÉ ANONYME DE REMORQUAGE À [HELICE v. BENNETTS, 27 T. L. R. 77—Hamilton, J.]

## XIV. PILOTAGE.

See also DEPENDENCIES. No. 8.

## (a) Authority of Pilot.

[No paragraphs in this vol. of the Digest.]

## (b) Defence of Compulsory Pilotage.

**76. Collision—Vessel Moored—Inevitable Accident—Onus of Proof—Compulsory Pilotage—Straits Settlements Ordinances (1879) No. 8, ss. 1 and 12; (1885) No. 5, s. 4; (1905) No. 8, ss. 21 and 32; (1905) No. 7, ss. 20 and 23.**—A vessel when leaving Singapore Harbour ran into another vessel moored to a wharf. In a damage action the vessel leaving the harbour alleged that the collision was an inevitable accident, as she was driven against the moored vessel by an abnormal current; it was further alleged that if the collision was caused by negligence it was caused by the negligence of the pilot on the vessel leaving

**XIV. Pilotage—Continued.**

the harbour, who was compulsorily in charge, and that therefore her owners were not liable for the damage.

**HELD**—that the onus was on the owners of the vessel leaving the harbour to show that the collision could not have been averted by the exercise of ordinary care and skill by a competent seaman, and that as the evidence did not establish that there was an abnormal current they had failed to discharge that onus, and were liable for the damage.

**HELD FURTHER**—that pilotage in Singapore Harbour was not compulsory.

**THE "POLYNÉSIE,"** [1910] P. 28; 79 L. J. P. [45]; 101 L. T. 749; 11 Asp. M. C. 354—Bigham, Pres.

**(c) Exempted Ships.**

[No paragraphs in this vol. of the Digest.]

**(d) Limits of Compulsory Pilotage.**

[No paragraphs in this vol. of the Digest.]

**(e) Miscellaneous.**

[No paragraphs in this vol. of the Digest.]

**XV. HARBOURS AND DOCKS.**

See also **PUBLIC HEALTH**, No. 3.

**(a) Authority of Harbour Master.**

[No paragraphs in this vol. of the Digest.]

**(b) Dues.**

**77. Scotland — Judicial Factor — Powers of Factor—Power to Increase Rates—Greenock Harbour Act, 1880** (43 & 44 Vict. c. clxx.), s. 70.]—A judicial factor appointed under sect. 70 of the Greenock Harbour Act, 1880, has no power to alter the harbour rates fixed by the harbour trustees; his only duty is to receive and apply the rates.

Decision of the First Division of the Court of Session ([1908] S. C. 944) affirmed.

**CARMICHAEL v. GREENOCK HARBOUR [TRUSTEES]** [1910] A. C. 274; 102 L. T. 297; 26 T. L. R. 332; 54 Sol. Jo. 391; [1910] S. C. (H. L.) 32; 47 Sc. L. R. 352—H. L. (Sc.).

**(c) Liability of Harbour Authority.**

[No paragraphs in this vol. of the Digest.]

**(d) Liability of Wharf Owner.**

[No paragraphs in this vol. of the Digest.]

**(e) Miscellaneous.**

**78. Portland Harbour — Soil Vested in Crown—Coal Hulk Permanently Anchored—Navigation—Trespass.**]—The title to the soil of Portland Harbour is vested in the Crown, subject only to the public rights of navigation and fishing. A coal hulk which is permanently moored in the harbour is not engaged in navigation, and a right to moor it permanently in the harbour can not be claimed as a right of navigation.

Decision of Lawrence, J. (102 L. T. 76; 26 T. L. R. 319; 11 Asp. M. C. 348) affirmed.

**DENABY AND CADLEY MAIN COLLIERIES, LD. v. ANSON.** [1911] 1 K. B. 171; 103 L. T. 349; 26 T. L. R. 667; 51 Sol. Jo. 748—C.A.

**XVI. MISCELLANEOUS SHIPPING REGULATIONS.**

[No paragraphs in this vol. of the Digest.]

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**SLANDER OF TITLE.**

See **TORTS.**

**SLAUGHTER-HOUSE.**

See **PUBLIC HEALTH.**

**SMALL DWELLINGS.**

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**SOLICITORS.**

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**I. IN GENERAL.**

[No paragraphs in this vol. of the Digest.]

**II. AUTHORITY.**

*See also* AGENCY, No. 5.

1. *Compromise of Action—Whether Binding on Client.*—If a client induces his solicitor to believe that he has authority to make a certain compromise, and he, reasonably relying upon that supposed authority, does make the compromise, the client is bound, whether he intended to give the authority or not, and whether in fact he understood the terms proposed or not.

LITTLE v. SPREADBURY, [1910] 2 K. B. [658] 79 L. J. K. B. 1119; 102 L. T. 829; 26 T. L. R. 552; 54 Sol. Jo. 618—Div. Ct.

**III. CERTIFICATE.**

[No paragraphs in this vol. of the Digest.]

**IV. CONFIDENTIAL RELATION.**

[No paragraphs in this vol. of the Digest.]

**V. COSTS.**

*See also* No. 17, *infra*; COMPANIES, No. 68; HUSBAND AND WIFE, No. 31; PRACTICE, XXIII.

**(a) General.**

2. *Solicitor and Client—Verbal Agreement between Plaintiff and his Solicitor that Plaintiff shall Pay no Costs—Right of Successful Plaintiff*

*to Costs from Defendant—Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), ss. 4, 5.*—A client who has made a verbal arrangement with his solicitor not to pay the latter any costs of an action which the solicitor is conducting on his behalf, although successful in the action, cannot recover any costs from the other side, by reason of the common law doctrine that costs are a mere indemnity, and cannot be given as a bonus to the party who receives them.

**HELD ALSO** (per Fletcher Moulton and Buckley, L.JJ.)—that the effect of such an arrangement between the plaintiff and his solicitor, although verbal, is to bring into operation the proviso to sect. 5 of the Attorneys and Solicitors Act, 1870, and to preclude the plaintiff from recovering any costs from the defendant.

Decision of Div. Ct. ([1910] 1 K. B. 99; 79 L. J. K. B. 101; 101 L. T. 685; 26 T. L. R. 42; 54 Sol. Jo. 33) affirmed.

GUNDREY v. SAINSBURY, [1910] 1 K. B. 645; [79 L. J. K. B. 713; 102 L. T. 440; 26 T. L. R. 321; 54 Sol. Jo. 327—C. A.

3. *Payment on Account by Company—Appointment of Receiver for Debenture Holders—Right of Receiver to Money in Solicitor's Hands—Costs Incurred subsequent to Appointment of Receiver—Solicitor's Retainer—Lien.*—A company paid to their solicitor the sum of £80 for costs incurred, and a further sum of £500 to meet the expenses of a threatened action, certain conveyancing expenses in connection with the company's premises, and the solicitor's own remuneration. A month later a receiver was appointed on behalf of the company's debenture-holders, and the amount of £580 was claimed from the solicitor as part of the company's assets. It was subsequently agreed that the solicitor should have his costs up to the date of the appointment of a receiver.

**HELD**—that the solicitor was entitled to all his costs incurred up to the appointment of a receiver, and that from that date the sum remaining in his hands unexhausted could be claimed on behalf of the debenture-holders; but that (the plaintiff not objecting) a fair remuneration, to be fixed by the taxing Master, should be paid to the solicitor, out of the fund, for his work in connection with the conveyancing matters undertaken for the company since the date of the appointment of a receiver.

IN RE BRITISH TEA TABLE CO. (1897), L.D., [PEARCE v. THE COMPANY, 101 L. T. 707—Joyce, J.

**(b) Bills of Costs.**

*See also* PRACTICE, No. 40.

4. *Country Solicitor—London Agent—Practice—Order of Course—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37—Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), ss. 3, 17.*—An order directing a London agent to deliver a bill of costs to his country client will not be discharged on the ground that it is contrary to the practice of the Chancery Division to grant a country client such an order on a petition of course.

### V. Costs—Continued.

*Smith v. Dimes* ((1849) 4 Exch. Rep. 32) followed; *Ward v. Eyre* ((1880) 15 Ch. D. 130) distinguished.

IN RE WILDE, [1910] 1 Ch. 100; 79 L. J. Ch. [119; 101 L. T. 734; *sub nom.* IN RE A SOLICITOR, 54 Sol. Jo. 67—Neville, J.

5. *Order for Delivery and Taxation—Non-Compliance—Motion for Attachment—Separate Service of Order and Certificate—Money in Possession or Control of Trustee—Costs of Reference—No Time fixed for Delivery of Documents—R. S. C. Ord. 51, r. 5—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4.*—An order, granting leave to issue attachment of a solicitor for contempt in not obeying a previous order, was made on the grounds that he had made default in respect of money in his possession or under his control in a fiduciary capacity within the meaning of the Debtors Act, 1869, and that he had failed to deliver upon oath documents in his custody belonging to the petitioner. The money referred to included the costs of a reference to taxation under the previous order for delivery and taxation of a bill of costs. The previous order fixed no time for the delivery of documents. The previous order and the taxing Master's certificate were served separately upon the solicitor, and he had objected to the granting of leave to issue attachment on the ground that no order for the payment of a definite sum had been served upon him. The solicitor's objection was overruled and he appealed.

HELD—that the objection as to separate service of the order and the certificate was preposterous, but that the appeal must be allowed, as matters affecting the liberty of the subject must be dealt with strictly, and the order was defective because the costs of the reference to taxation could not be within the Debtors Act, 1869, and also because no time had been fixed for the delivery of documents.

Decision of Eady, J. ([1910] W. N. 105) reversed.

IN RE WILDE, [1910] W. N. 128—C. A.

### (c) Charging Orders.

[No paragraphs in this vol. of the Digest.]

### (d) Taxation.

See also No. 17, *infra*; BANKRUPTCY, Nos. 18, 19, 20; PRACTICE, XXIII. (h).

6. *Taxation after Payment—Special Circumstances—Payment under Protest—Three Clients—Triplicate Charges—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38.*—G., a client, purchased the equity of redemption in certain properties in 1906, and employed W. to act as his solicitor in the matter.

In July, 1909, W., as solicitor for three mortgagees, gave G. notice to pay off the mortgages. It was arranged, after some delay, that the mortgages should be paid off and reconveyances taken, after which fresh mortgages were

made. Completion was fixed for January 28th, and W. delivered his bill on January 21st. G. paid the bill "under protest", and now applied to tax the bill.

Triplicate charges were made for letters and attendances, inasmuch as W. acted for three mortgagees, but the charges were moderate. One item of 10s. 2d., however, was admittedly charged in error. Before the Master W. offered to return £4, each party paying his own costs, but this was declined.

HELD—that there is no rigid rule as to what circumstances will justify taxation of a solicitor's bill after payment; and that the applicant had not made out special circumstances.

*Semble*, when a solicitor makes an attendance which can be charged against several clients he should charge a larger sum than for one attendance and divide it up among the several clients, and not charge an attendance to each client.

IN RE WARD, BOWIE & Co., 102 L. T. 527—  
[Eady, J.]

Affirmed on appeal, 102 L. T. 881—C. A.

7. *Taxation after Payment—Payment under Protest—Solicitor and Client—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 38.*—A contract for the purchase of land was made on August 11th, 1909. After delay till January 11th, 1910, the purchaser commenced an action to compel completion. The action was settled, after going as far as the summons for directions, the vendor's party and party costs to be paid by the purchaser. The bill was delivered on March 12th. No application to tax was made, but it was paid under protest. An urban district council, who were the real purchasers, objected to costs incurred before instructions to sue.

HELD—that no case for taxation after payment had been made out.

IN RE KING, 74 J. P. 445—Eady, J.

8. *Order of Course—Non-disclosure of Material Facts—Order Discharged.*—A client of a solicitor who had acted in certain proceedings on behalf of this client and 124 others obtained a common order to tax upon a petition of course, which omitted to state material facts, including the fact that the solicitor's bill of costs in respect of the proceedings had been paid by a third party.

HELD—the order must be discharged.

IN RE S., A SOLICITOR, 55 Sol. Jo. 127, Warring-  
[ton, J.]

9. *Non-contentious Business—District Registrar—Proper Officer—R. S. C. Ord. 35, rr. 4, 6A; Ord. 61, r. 1B; Ord. 65, r. 26A—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.*—A district registrar is not a proper officer of the Court to whom non-contentious business can be referred for taxation.

IN RE R. W. STEAD, A SOLICITOR, [1910] 2 K. B. [713; 80 L. J. K. B. 1; 103 L. T. 12; 54 Sol. Jo. 618—C. A.]

10. *Light Railways Act, 1896 (59 & 60 Vict. c. 48)—Provisional Order—Parliamentary or Chancery Scale—Charges before Retainer—*

### V. Costs—Continued.

*Deposit of Plans.*—The costs of and connected with the preparation and making of a provisional order under the Light Railways Act, 1896, are taxed on the Chancery, and not the Parliamentary, scale.

*In re Morley* ((1875) L. R. 20 Eq. 17) affirmed. Decision of Eve, J. ([1909] W. N. 149; 53 Sol. Jo. 617) affirmed.

*IN RE PETERSON*, [1909] 2 Ch. 398; 79 L. J. Ch. [53; 101 L. T. 480; 73 J. P. 461; 53 Sol. Jo. 735—C. A.

**11. Miscellaneous Costs in Administration Suit—Letters to Creditors—Discretion of Taxing Master.**—On taxation of miscellaneous costs as executor's costs in a creditor's administration suit, it appeared that a large number of letters had been written by the defendant's solicitor to creditors in reply to inquiries as to the progress of the realisation and of the suit. The taxing Master came to the conclusion that the letters in question were letters of courtesy, and in no sense necessary or proper for the conduct of the litigation, and disallowed the costs claimed in respect of them, but allowed costs for all letters which he considered of a special or proper character.

**HELD** (notwithstanding a consent by plaintiff's solicitor to the allowance of the costs which had been disallowed)—that the matter was one within the discretion of the taxing Master, and the Court should not interfere with the exercise of that discretion.

*IN RE FINDLAY, FINDLAY v. CUTHBERTSON*, [44 I. L. T. 214—C. A., Ireland.

### (e) Solicitors' Remuneration Act, 1881.

**12. Settled Land—Sale by Tenant for Life—Special Arrangement as to Solicitors' Costs.**—Previous to a sale of settled land by auction the solicitors of the tenant for life gave him notice that they should charge in the case of any lot which was sold for less than £1,000 upon the scale of Sched. II. of the order made under the Solicitors' Remuneration Act, 1881, instead of upon the scale of Part I. of Sched. I., and the tenant for life agreed to this.

**HELD**—that there was no objection in principle to this arrangement, and that the charges of the solicitors on this basis might be allowed on taxation.

*IN RE SIR ROBERT PEEL'S SETTLED ESTATES*, [1910] 1 Ch. 389; 79 L. J. Ch. 233; 102 L. T. 67; 26 T. L. R. 227; 54 Sol. Jo. 214—Warrington, J.

### VI. COVENANT IN RESTRAINT OF TRADE.

**13. Agreement by Clerk not to Practise—Prohibited Area—Office Outside Area—Writing to Client Within Area.**—The defendant on entering the plaintiff's service agreed that he would not at any time carry on the business of a solicitor within a certain area. After leaving the plaintiff's service the defendant opened an office outside the prohibited area, and on one occasion was consulted at his office by a former client of the plaintiffs who lived within the area.

**HELD**—that this was a breach of the agreement.

*WOODBIDGE & SONS v. BELLAMY*, [1910] W. N. [269; 55 Sol. Jo. 126—Eve, J.

### VII. LIABILITY.

*See also* AGENCY, No. 5; HUSBAND AND WIFE, No. 31.

**14. Alleged Actionable Negligence—Error of Judgment—Pecuniary Damage to Client—Evidence in Favour of Solicitor—Finding of Court—Crassa Negligentia not Established.**—It is not sufficient for a client to allege and prove that the solicitor acting on his behalf gave him wrong advice on a doubtful point. Something more than an error of judgment is necessary in order to constitute actionable negligence, for the solicitor is not liable unless *crassa negligentia* can be established, whereby the client has suffered damage.

Decision of Div. Ct. affirmed.

*FAITHFULL v. KESTIVEN*, 103 L. T. 56—C. A.

### VIII. LIEN.

*See also* No. 3, *supra*.

**15. Company being Wound up—Liquidator—Documents in Solicitor's Hands and Subject to Lien before Date of Winding-up Order.**—A solicitor was conducting an action for a company against three of its directors for a declaration that they had acted since becoming unqualified and for penalties and an injunction. Whilst the action was in progress a winding-up order was made. The liquidator continued the action, but eventually changed his solicitor.

**HELD**—that the old solicitor had a lien against the liquidator for his unpaid costs upon those documents in the action which were in his hands at the date of the winding-up order.

*IN RE RAPID ROAD TRANSIT CO.*, [1909] 1 Ch. [96; 78 L. J. Ch. 132; 99 L. T. 774; 53 Sol. Jo. 83; 16 Manson, 289—Neville, J.

**16. Administration Action—Receiver—Delivery up of Documents.**—A solicitor will be ordered to produce and to deliver up to the receiver appointed in an administration action documents over which he has a lien for costs. It makes no difference that the documents came into the solicitor's possession before suit.

*In re Hawkes* ([1898] 2 Ch. 1) followed.

*IN RE CAUDERY, LONDON JOINT STOCK BANK v. WIGHTMAN*, 54 Sol. Jo. 444—Eady, J.

**17. Debenture Deed—Costs of Solicitors of Trustees—Taxation.**—A company proposed to issue £175,000 worth of debentures. Seventy-five thousand pounds worth was issued to W. in respect of incumbrances. The remaining £100,000 worth was issued under conditions which did not become effective, so W. was the only *cestui que trust* under the deed. He was also one of the trustees. Certain costs of investigating the title to the property were incurred between September, 1897, and July 4th, 1898, when W. executed the

VIII. Lien—*Continued.*

deed. E. was appointed a trustee jointly with W. on July 20th, 1901, and survived him. In 1906 an order was made for the sale of the hereditaments, and the deeds were handed over subject to the lien of the solicitors of the trustees of the debenture deed. The order for taxation of costs made no mention of the lien, and all costs prior to November 4th, 1898, were disallowed. The debenture deed provided for the payment of the costs of the trustees in various matters "or otherwise in relation to the premises."

**HELD**—that the solicitors were entitled to have the matter inquired into, and that, in addition to the costs directed to be taxed by the order, the Master must allow all sums (if any) properly payable for costs for which the solicitors have a lien, and also any costs and expenses incurred by the trustees of the deed or any of them in or about the execution of the trusts of the deed and not comprised in the former order.

IN RE DEE ESTATES, LD., WRIGHT v. DEE [ESTATES, LD., 102 L. T. 645—Eady, J.]

## IX. MISCONDUCT.

**18. Lump Sum Paid by Client to Solicitor for Conduct of Proceedings—Counsel Employed by Solicitor—Fees Marked on Brief—Failure by Solicitor to Pay Counsel—Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 13.**—A client agreed with a solicitor to conduct legal proceedings on his behalf for the lump sum of £70. On November 12th, 1907, counsel was instructed to appear in the matter, and his brief was marked three guineas and one guinea. The client paid the solicitor £50 on April 19th, 1907, and the remaining £20 on November 15th, 1907. The barrister's clerk applied on a number of occasions for the payment of the fees marked on the brief, but on May 1st, 1910, the fees had not been paid. The matter having been brought before the Law Society by the Bar Council, the solicitor on May 25th, 1910, paid the fees in full, stating in a letter to the Bar Council that he had distinguished the case from one in which a payment had been received from a client on account of counsel's fees, or where the fees had been set out in a bill of costs, and the bill paid, and also pleading poverty. It appeared that the matter in respect of which the lump sum had been paid was an action in the High Court, in which the client was a party.

**HELD**—that the solicitor had committed misconduct within the meaning of sect. 13 of the Solicitors Act, 1888, and the order was made that the solicitor should pay the costs of the inquiry before the Law Society, and of the application to the Court.

IN RE A SOLICITOR, EX PARTE LAW SOCIETY, [55 Sol. Jo. 49—Div. Ct.]

## X. PRACTICE.

**19. Money of Client in Hands of Solicitor—Loan or Payment for Investment—Disciplinary Jurisdiction—R. S. C., Ord. 52, r. 25.**—B., who had employed Y., a solicitor, to act for him professionally, subsequently paid to him £200, and the following document was drawn up,

recording the transaction, and signed by Y.: "Three months after demand I promise to pay Mr. B., or to invest for him, as he may wish, the sum of £200 for value received, and in the meantime to pay interest after the rate of £5 per centum . . . until payment or investment . . . or so much thereof as shall from time to time remain owing." B. applied by summons under Ord. 52, r. 25, for payment of the £200, and interest thereon.

**HELD**—that, having regard to the terms of the document and to the circumstances of the case, the transaction was a loan and not a payment to the solicitor of money for investment, and that therefore, the money not being in the custody or control of the solicitor on behalf of the applicant, as client, the Master had no jurisdiction under Ord. 52, r. 25, to make the order asked for.

IN RE MATTER OF Y. (A SOLICITOR), 54 Sol. Jo. [459—Div. Ct.]

## XI. SOLICITOR TRUSTEE.

See TRUSTS, No. 7.

## XII. UNDERTAKINGS.

**20. Personal Undertaking to Notify Client's Change of Address—Not Embodied in Order—Change of Solicitor—Responsibility of Former Solicitor.**—When the Court makes an order in reference to which a solicitor gives his personal undertaking, the fact that his undertaking is not embodied in the order, as subsequently drawn up by the Crown Office, does not release him from liability, nor is his responsibility altered by the fact that since the order of the Court was made he has ceased to act as solicitor to the client.

WILLIAMS v. WILLIAMS AND PARTRIDGE, 54 [Sol. Jo. 506—C. A.]

**21. Undertaking to Pay Money—Undertaking given to Person not a Client—No Legal Proceedings Pending and no Misconduct on Part of Solicitor—Jurisdiction of Court to Enforce Undertaking by Summary Order.**—The Court has jurisdiction to enforce by a summary order an undertaking given by a solicitor to repay a sum of money received by him in his capacity as a solicitor, although the person to whom the undertaking was given was not the client of the solicitor, and there were no legal proceedings pending when the undertaking was given, and there is no misconduct on the part of the solicitor. When a solicitor in the course of business which he is conducting for a client with a third party in the way of his profession gives to that third party an undertaking incidental to that business, his undertaking is one which is given by him in his capacity as a solicitor, and may be enforced by summary remedy.

UNITED MINING AND FINANCE CORPORATION, LD. v. BECHER, [1910] 2 K. B. 296; 79 L. J. K. B. 1006; 103 L. T. 65—Hamilton, J.

## XIII. UNQUALIFIED PERSONS.

[No paragraphs in this vol. of the Digest.]



**SOUTH AUSTRALIA.***See* DEPENDENCIES AND COLONIES.**SPECIFIC PERFORMANCE.***See also* CONTRACTS.

1. *Sale of Land—Conduct of Vendor.*—In March, 1904, the defendants agreed to purchase land for a public purpose, subject to certain consents being obtained, which were in fact obtained in May, 1906. In April, 1905, the vendor wrote: "After the expiration of the period named" for completion "I shall not consider myself bound by any agreement, but shall dispose of the lots as I may think fit." And in June, 1906, he wrote: "The commissioners have most vexatiously delayed necessary procedure for upwards of two years. I therefore wish them clearly to understand that I shall not consent to extend the time of settlement for one day."

HELD—that the vendor had not debarred himself from asking for specific performance of the contract.

*Roynou v. Paul* ((1858) 28 L. J. Ch. 555) distinguished.

Decision of High Court of Justice of the Isle of Man reversed.

LAUGHTON v. COMMISSIONERS OF PORT ERIN.  
[1910] A. C. 565; 103 L. T. 148—P. C.

**SPIRITS.**

*See* FOOD AND DRUGS; INTOXICATING LIQUORS; REVENUE.

**SPORT AND SPORTING.**

*See* GAME; LANDLORD AND TENANT.  
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**STAMPS AND STAMP DUTIES.**

*See* REVENUE.

**STATUTES.**

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**I. CONSTRUCTION.**

*See* ANIMALS, No. 6; GAMING, No. 11;  
INFANTS, No. 4.

**II. RETROSPECTIVE OPERATION.**

1. *Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), ss. 10 (1), 19 (2)—*Crime Committed after Passing and before Coming into Operation of the Act.*—The Prevention of Crime Act, 1908, was passed on December 21st, 1908. By sect. 19, sub-sect. 2, of that Act, "This Act shall come into operation on the first day of August, 1909." A crime was committed on July 13th, 1909, and on October 7th, 1909, its perpetrator was convicted on indictment of the crime, and of being an habitual criminal.

HELD—that the words in sect. 10, sub-sect. 1, of the Act, "Where a person is convicted on indictment of a crime committed after the passing of this Act," etc., meant after the actual passing of the Act on December 21st, 1908, and not the date of August 1st, 1909, when the Act came into operation, and that, therefore, the offender could be convicted under the Act of being an habitual criminal.

*R. v. SMITH*; *R. v. WESTON*, [1910] 1 K. B. 17;  
[79 L. J. K. B. 1; 101 L. T. 816; 74 J. P. 13;  
26 T. L. R. 23; 54 Sol. Jo. 137—C. C. A.]

**STATUTE OF FRAUDS.**

*See* CONTRACT; EVIDENCE: SALE OF GOODS; SALE OF LAND.

**STATUTE OF LIMITATIONS.**

*See* LIMITATION OF ACTIONS; REAL PROPERTY AND CHATTELS REAL.

**STATUTE OF USES.**

*See* REAL PROPERTY AND CHATTELS REAL; SETTLEMENTS; TRUSTS AND TRUSTEES; WILLS.

**STOCK EXCHANGE.**

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*See also* AGENCY, No. 2; GAMING, Nos.  
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**I. RULES AND CUSTOMS.**

1. *Continuation Note* — "Net" — *Custom of Stock Exchange* — *Secret Profit* — *Deposit of*

## I. Rules and Customs—Continued.

*Shares as Cover—Blank Transfer—Power to Sell—Notice.*—The word "net" in a continuation note, having a well-known meaning on the Stock Exchange, can raise no suggestion of secret profit merely because it does not convey to a principal, not acquainted with the Stock Exchange custom, the fact that the sum so qualified includes a charge by the broker for his services in respect of the carry-over.

Decision of Neville, J. ([1910] 1 Ch. 195; 101 L. T. 709; 54 Sol. Jo. 82) reversed.

The whole of a block of shares, deposited as cover in respect of sums due on a cash transaction, and accompanied by a blank transfer, may be disposed of, after reasonable notice, to meet the sums due.

Decision of Neville, J. (*supra*) affirmed on this point.

STUBBS v. SLATER, [1910] 1 Ch. 632; 79 L. J. [Ch. 420; 102 L. T. 444—C. A.]

## II. BROKERS AND CLIENTS.

### (a) In General.

**2. Advice by London Broker to Country Broker—Liability of London Broker for Advice Given.**—The plaintiffs, who were London stockbrokers, acted as agents for the defendants, who were country stockbrokers, in the purchase of shares which were to be taken up or carried over by the defendants. Shortly thereafter the plaintiffs strongly advised the defendants to sell all the shares as they had confidential information that a heavy fall in price was likely to take place immediately. The defendants without consulting their clients agreed to the shares being sold. The shares did not fall in price, but rose rapidly, and the defendants alleged that they had to make good for their clients a sum of £890 by buying back shares. In an action by the plaintiffs for balance of an account in connection with the shares the defendants counterclaimed for damages for breach of duty by the plaintiffs.

**HELD**—that, as the defendants were under no obligation to sell the shares without consulting their clients, the loss resulting from the repurchase arose from their own act, and therefore that the counterclaim failed.

*Semble*, there was no obligation on the part of the plaintiffs to investigate the accuracy of the information imparted to the defendants as to the likelihood of a fall in the shares.

PAUL E. SCHWEDER & CO. v. WALTON AND [HEMINGWAY, 27 T. L. R. 89—Ridley, J.]

### (b) Carrying Over.

*See* No. 1, *supra*.

### (c) Closing Accounts.

[No paragraphs in this vol. of the Digest.]

### (d) Defaulting Brokers.

[No paragraphs in this vol. of the Digest.]

## STOPPAGE IN TRANSIT.

*See* CARRIERS; SALE OF GOODS; SHIPPING AND NAVIGATION.

## STREETS.

*See* HIGHWAYS, STREETS AND BRIDGES; METROPOLIS. IX.

## STREET BETTING.

*See* GAMING AND WAGERING.

## STREET RAILWAYS.

*See* TRAMWAYS AND LIGHT RAILWAYS.

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NEGLIGENCE, XII.; NUISANCE, Nos.  
1, 2, 3; TRAMWAYS, No. 1.

### I. HACKNEY CARRIAGES.

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### II. MOTOR CARS.

*See also* MAGISTRATES, No. 6; NUISANCE,  
Nos. 1, 2, 3.

#### (a) Offences.

*See also* METROPOLIS, No. 6.

(i.) *Driving and Speed*.

*See also* Nos. 9, 10, *infra*; MAGISTRATES,  
No. 1.

**1. Exceeding Speed Limit—Evidence—Identity of Driver—Contents of Licence—Notice to Produce—Secondary Evidence—Motor Car Act, 1903** (3 Edw. 7, c. 36), ss. 3 (4), 9 (1).—On the prosecution of the driver of a motor car for exceeding

### 11. Motor Cars—Continued.

the speed limit fixed by sect. 9 (1) of the Motor Car Act, 1903, it is not necessary to give the defendant notice to produce his licence, in order to let in evidence as to its contents by the police constable who stopped the car, and to whom the licence was produced by the driver at the time.

MARSHALL v. FORD, 99 L. T. 796; 72 J. P. 480; [6 L. G. R. 1126; 21 Cox, C. C. 731—Div. Ct.

2. *Exceeding Speed Limit—Warning as to "Traps"*—*Warning Driver—Obstruction of Police—Prevention of Crimes (Amendment) Act, 1885* (48 & 49 Vict. c. 75), s. 2—*Motor Car Act, 1903* (3 Edw. 7, c. 6), s. 9 (1).—The employee of an association of motor car owners, who is stationed on a highway for the purpose of warning the drivers of motor cars belonging to members of the association that they are approaching a measured distance over which police officers intend to take the speed of the cars, and who accordingly does give such warning to the drivers of such motor cars, which at the time of the warning are being driven at a rate of speed exceeding twenty miles an hour, contrary to sect. 9 (1) of the Motor Car Act, 1903, the result of the warning being that the cars are slowed down and pass through the measured distance at a speed not exceeding twenty miles an hour, is guilty of the offence of wilfully obstructing the police in the execution of their duty, contrary to sect. 2 of the Prevention of Crimes (Amendment) Act, 1885.

BUSTABLE v. LITTLE ([1907] 1 K. B. 59; 76 L. J. K. B. 77; 96 L. T. 115; 71 J. P. 52; 23 T. L. R. 38; 5 L. G. R. 279; 21 Cox, C. C. 354—Div. Ct.) distinguished.

BETTS v. STEVENS, [1910] 1 K. B. 1; 79 L. J. [K. B. 17; 101 L. T. 564; 73 J. P. 486; 26 T. L. R. 5; 7 L. G. R. 1052—Div. Ct.

3. *Exceeding Speed Limit—Previous Convictions—Proof—No Appearance in Person—Evidence of Identity—Prevention of Crimes Act, 1871* (34 & 35 Vict. c. 112), s. 18—*Motor Car Act, 1903* (3 Edw. 7, c. 36), ss. 3, 4, 9].—On the hearing of an information against the appellant L. W. B. M., of R.-street Chambers, St. James', for having driven a motor car on a public highway at a speed exceeding twenty miles an hour contrary to sect. 9 of the Motor Car Act, 1903, he did not appear, but was represented by counsel, and the justices held that the offence had been proved. At an adjourned hearing for the proof of previous convictions of which notice was given to the appellant's counsel, the appellant was not present, but was again represented by counsel. Evidence was then given that a person bearing the name L. W. B. M., of Chelsea, and L. W. B. M., of R.-street, St. James', being the same person, had twice been convicted for exceeding the speed limit at C.; and, further, that a person of the name L. M., of R.-street Chambers, St. James's Street, had been convicted at B. for the same offence. Evidence was also given by the registration officer of the London County Council that a person of the same name and address as the appellant held a licence, No. 5080, at all material times, and thereupon evidence was admitted that when the licence

was produced by the person driving the car at B. it bore the same number, 5080, and that it had been issued by the London County Council.

Certified copies of each of the three convictions were produced, but no notice to produce his licence had been served upon the appellant.

The justices were of opinion that there was legally admissible evidence before them that the appellant was the person mentioned in the three certified copies of convictions.

HELD—that there was evidence upon which the justices could act.

The word "proof" in sect. 18 of the Prevention of Crimes Act, 1871, does not mean conclusive proof, but evidence upon which a jury might act.

MARTIN v. WHITE, [1910] 1 K. B. 666; 79 L. J. [K. B. 553; 102 L. T. 23; 74 J. P. 106; 26 T. L. R. 218; 8 L. G. R. 218—Div. Ct.

4. *Excessive Speed—Road Passing through Scheduled Area—Motor Car Timed over Section of Road Lying only Partly within Scheduled Area—Motor Car Act, 1903* (3 Edw. 7, c. 36), s. 9 (1).—By an order made under the Motor Car Act, 1903, sect. 9 (1), the speed of motor cars was limited to ten miles per hour within a certain scheduled area. A complaint stated that the accused had driven a motor bicycle at a speed exceeding ten miles per hour from a point A. which was within the scheduled area to a point B. which was 50 yards beyond it. The evidence disclosed that while the scheduled area included 1320 yards of road, the accused had been timed over a distance of 1414 yards, extending beyond the scheduled area both at the beginning and at the end, and this distance he had covered at the rate of over sixteen miles per hour. The accused was convicted.

HELD, sustaining the conviction—that the rate at which the accused had driven over the 1414 yards rendered it certain that he had exceeded the legal limit within the scheduled area.

YEAMAN v. JAMESON, [1910] S. C. (J.) 8; 47 [Sc. L. R. 158; 6 Adam, 149—Ct. of Justy.

5. *Exceeding Speed Limit—Notice of the Intended Prosecution—Motor Car Act, 1903* (3 Edw. 7, c. 36), s. 9 (2).—The notice of intended prosecution required to be sent, under sect. 9, subsect. 2, of the Motor Car Act, 1903, to a person who has committed an offence under sect. 9, and was not warned of the intended prosecution at the time the offence was committed, ought to be in writing and should set forth the particulars of the offence, stating generally what it was, and the place, date, and hour at which it occurred.

HUGHES v. NIMMO, [1910] S. C. (J.) 45; 47 [Sc. L. R. 381; 6 Adam, 217—Ct. of Justy.

6. *Exceeding Speed Limit—Ascertainment of Speed—Police "Trap"—Motor Car Act, 1903* (3 Edw. 7, c. 36), s. 9].—A person was charged with exceeding the speed limit by driving a motor car at twenty-five miles an hour. The locus of the alleged offence was within a "trap" consisting of a quarter of a mile of straight road. The accused was convicted on the evidence of two police constables, who had stood together

### 11. Motor Cars—Continued.

470 yards from the entrance to the "trap," and had taken the time when they judged that the car entered and when it left the "trap."

**HELD**—that in view of the fact that the alleged speed of the car was only five miles in excess of the statutory limit, the evidence on which the conviction followed was not sufficiently reliable to justify the conclusion arrived at by the Sheriff-Substitute, and that the conviction should be quashed.

Observations on the methods adopted for ascertaining the speed of the motor car.

**WRIGHT v. DUMBARTONSHIRE PROCURATOR [FISCAL, 47 Sc. L. R. 699—Ct. of Justy.]**

**7. Form of Summons—Previous Convictions—Motor Car Act, 1903 (3 Edw. 7, c. 36), ss. 1, 9, 11.]**—Where a summons is taken out against the driver of a motor car under sect. 1, sub-sect. 1, of the Motor Car Act, 1903, it is not necessary that the summons should contain a statement as to previous convictions under the Act, and, though insertion of such a statement may not be wrong in law, it is preferable that no such statement be included in the summons. The proper method is to give the defendant separate notice that such previous convictions will be charged against him.

**R. v. HANKEY AND ANOTHER, JUSTICES, 55 [Sol. Jo. 77—Div. Ct.]**

### (ii.) Registration and Licensing.

**8. Suspension of Licence—Excessive Speed—Notice of Appeal—Commencement of Period of Suspension—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 4 (4).]**—The appellant was summoned for exceeding the speed limit of twenty miles per hour fixed by the Motor Car Act, 1903, and he pleaded guilty. He was convicted and fined and his licence was ordered to be suspended for three months. The appellant appealed to quarter sessions, but his appeal was struck out on the ground that, as the appellant had pleaded guilty, quarter sessions had no jurisdiction to hear the appeal.

At a date which was more than three months after the conviction, but less than three months after the appeal came on to be heard at quarter sessions, the appellant was seen driving a motor car and was summoned for doing so without being licensed.

**HELD**—that the appellant was duly licensed, as the period of suspension of his licence commenced to run at the date of his conviction, and the operation of the order of suspension was not deferred by the notice of appeal.

**KIDNER v. DANIELS, 102 L. T. 132; 74 J. P. 127; [8 L. G. R. 159—Div. Ct.]**

### (iii.) Use and Construction.

**9. Obstruction of Highway—Offence in Connection with the Driving of a Motor Car—Liability to Endorsement—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 4 (1) (2)—Motor Cars (Use and Construction) Order, 1904, art. 4 (2).]**—The

driver of a motor car, after unloading goods in one of the principal thoroughfares of a town, left the car endwise against the kerbstone whilst he was delivering goods in other parts of the town. He was convicted of allowing the motor car to stand on the highway so as to cause an unnecessary obstruction thereof contrary to art. 4 (2) of the Motor Cars (Use and Construction) Order, 1904.

**HELD**—that the driver had not been convicted of an offence in connection with the driving of a motor car within the meaning of sect. 4 (1) of the Motor Car Act, 1903, so as to make it obligatory upon him, under sect. 4 (2) of the same Act, to produce his licence within a reasonable time for the purposes of endorsement.

**R. v. JUSTICES OF YORKSHIRE (WEST RIDING). [EX PARTE SHACKLETON, [1910] 1 K. B. 439; 79 L. J. K. B. 244; 102 L. T. 138; sub nom. R. v. BEAVER AND ARMSTRONG, ETC., 74 J. P. 127; 8 L. G. R. 163—Div. Ct.]**

**10. Failure to Carry Lamp—Offence "in Connection with the Driving of a Motor Car"—Endorsement of Licence—Motor Car (Use and Construction) Order, 1904, art. 2 (7)—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 4.]**—Failure on the part of the person in charge of a motor car to have, as required by art. 2 (7) of the Motor Car (Use and Construction) Order, 1904, a lamp on the extreme right or off-side of the car so as to exhibit, during the period between one hour after sunset and one hour before sunrise, a white light visible within a reasonable distance in the direction towards which the car is proceeding is an offence "in connection with the driving of a motor car" within sect. 4 of the Motor Car Act, 1903, and a conviction for that offence may therefore be endorsed on such person's licence.

**EX PARTE SYMES, [1910] W. N. 219; 103 L. T. 428; 27 T. L. R. 21—Div. Ct.]**

**11. Light Locomotive—Definition—Weight of Less than Five Tons Unladen—Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 1—Locomotives Act, 1898 (61 & 62 Vict. c. 29), ss. 5 (1) (b) and 17 (2)—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 12—Heavy Motor Car Order, 1904, art. 3.]**—Sect. 5 (1) (b) of the Locomotives Act, 1898, requires that in the case of any locomotive, not being a steam-roller, passing on any highway, there shall be three men in attendance, and sect. 17, sub-sect. 2 of the same Act provides that nothing in the Act shall apply to locomotives that are light locomotives within the Locomotives on Highways Act, 1896. Sect. 1 of the Locomotives on Highways Act, 1896 defines a light locomotive as one which, subject to certain conditions, weighs less than three tons unladen. Sect. 12 of the Motor Car Act, 1903, gives the Local Government Board power to increase the maximum weight mentioned in sect. 1 of the Locomotives on Highways Act, 1896. The Local Government Board, by art. 3 of the Heavy Motor Car Order, 1904, provided that except as otherwise provided in the regulations a heavy motor car may be used on a highway, if its weight unladen does not exceed five tons. The appellant was summoned for using on



**11. Motor Cars—Continued.**

a highway a locomotive (not being a steam-roller) not having three men in attendance. The locomotive was propelled by steam, and weighed 4 tons 15 cwt. unladen. In other respects it complied with the conditions laid down in sect. 1 of the Locomotives on Highways Act, 1896.

**HELD**—that all self-propelled vehicles, whether light or heavy motor cars, were “light locomotives” if their weight unladen did not exceed five tons, and that the locomotive came within the exemption contained in sect. 17, sub-sect. 2, of the Locomotives Act, 1898.

**EVANS v. NICHOLL**, [1909] 1 K. B. 778; 78 [L. J. K. B. 428; 100 L. T. 496; 73 J. P. 154; 25 T. L. R. 239; 7 L. G. R. 386; 22 Cox, C. C. 70—Div. Ct.

(iv.) *Miscellaneous.*

[No paragraphs in this vol. of the Digest.]

(b) **Appeals.**

*See* No. 8, *supra*.

(c) **Royal Parks.**

[No paragraphs in this vol. of the Digest.]

**III. MISCELLANEOUS.**

**12. Traffic Regulations—Warning—Penalty—Manchester Corporation (General Powers) Act, 1902** (2 Edw. 7, c. cxxviii.), s. 22.]—A local statute provided that regulations might be made by the M. Corporation requiring the drivers of heavy and slow-moving vehicles to keep their vehicles to a particular portion of the street, and that “any person who shall contravene any such regulation after warning” should be liable to a penalty.

**HELD**—that any regulations which inflicted a penalty for driving in the middle of the road in the absence of warning would be *ultra vires*, and there could be no penalty inflicted unless a person had so driven after he had been warned.

**CHORLTON v. LIGGETT**, 103 L. T. 543; 74 J. P. [458; 8 L. G. R. 983; **LORD v. BARNSLEY**, 8 L. G. R. 983—Div. Ct.

**SUBPŒNA.**

*See* CRIMINAL LAW; EVIDENCE.

**SUBROGATION.**

*See* EQUITY.

**SUCCESSION DUTY.**

*See* DEATH DUTIES.

**SUICIDE.**

*See* CRIMINAL LAW AND PROCEDURE.

**SUMMARY JURISDICTION.**

*See* MAGISTRATES.

**SUNDAY TRADING.**

*See* TIME.

**SUPPORT.**

*See* DAMAGES; EASEMENTS; MINES.

**SURETY.**

*See* GUARANTEE AND INDEMNITY.

**SURGEONS.**

*See* MEDICINE AND PHARMACY.

**SWINE FEVER.**

*See* ANIMALS.

**TAIL, TENANTS IN TAIL.**

*See* REAL PROPERTY AND CHATTELS  
REAL; SETTLEMENTS.

**TAXATION.**

*See* DEATH DUTIES; INCOME TAX; INHABITED HOUSE DUTY; LAND TAX; REVENUE.

**TAXATION OF COSTS.**

*See* ARBITRATION; COUNTY COURTS; PRACTICE AND PROCEDURE; SOLICITORS, ETC.

## TELEGRAPHS AND TELEPHONES.

## TESTAMENTARY CAPACITY.

See WILLS.

## THAMES, RIVER.

See METROPOLIS; SHIPPING AND NAVIGATION; WATERS AND WATERCOURSES.

## THEATRES, MUSIC-HALLS AND SHOWS.

See also LOCAL GOVERNMENT, No. 19.

1. *Cinematograph—Licence for Exhibition—Condition—Not to be Open on Sunday—Validity—Cinematograph Act, 1909* (9 Edw. 7, c. 30), ss. 1, 2.]—A county council, in granting a licence under sect. 2 of the Cinematograph Act, 1909, for a cinematograph exhibition, may lawfully insert a condition therein that the exhibition shall not be opened on Sunday, Good Friday, or Christmas Day.

LONDON COUNTY COUNCIL *v.* BERMONDSEY [BIOSCOPE CO., [1910] W. N. 279; 27 T. L. R. 141—Div. Ct.]

## THEFT.

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## THREATS.

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## TIME.

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See also COMPULSORY PURCHASE; LANDLORD AND TENANT; SHIPPING.

### I. COMPUTATION OF TIME.

See also SHIPPING, No. 30.

1. *"Within Six Months"—Claim for Compensation—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 2 (1).]—The Workmen's Compensation Act, 1906, sect. 2 (1), enacts that proceedings for the recovery of compensation shall not be maintainable unless the claim for compensation has been made "within six months of the occurrence of the accident."

A workman was injured during the course of his employment at 11.30 a.m. on November 24th,

### I. TELEPHONES.

1. *Telegraph Line—Overhead or Underground—Economy—Views of Local Community—Telegraph Act, 1878* (41 & 42 Vict. c. 76, s. 4).]—A difference arose between the Postmaster-General and a local authority as to whether the former should be at liberty to erect an overhead telegraph line along a quarter of a mile of a certain street. The posts and wires would not be likely to be a source of danger or an obstruction or to affect the amenities of the street. The local authority, who strongly opposed the overhead system, had previously at very considerable expense taken down all their own overhead telegraph lines and laid them underground.

HELD—that, the economy of the overhead system being trifling, it should not in the particular circumstances of this case be allowed to prevail against the strong views of the local community, and that the underground system should be adopted.

POSTMASTER-GENERAL *v.* TOTTENHAM URBAN [DISTRICT COUNCIL, 8 L. G. R. 791—Rly. and Can. Com.]

2. *Telephone—Underground Telephone Wires—Whether Corporation has a Right to Insist upon Telephone Wires Being Laid Underground—Difference between Corporation and Postmaster-General—Telegraph Act, 1878* (41 & 42 Vict. c. 76, s. 4).]—In view of the difference between the cost of overhead and underground telephone wires, the corporation of a town which prides itself on its residential character is not justified in requiring, merely on aesthetic grounds, the extra expense to be incurred.

CROYDON CORPORATION *v.* POSTMASTER-GENERAL, 74 J. P. 421; 8 L. G. R. 1005—Rly. and Can. Com.]

### II. SUBMARINE CABLE.

[No paragraphs in this vol. of the Digest.]

## TENANT FOR LIFE AND REMAINDERMAN.

See RENT-CHARGES AND ANNUITIES; SETTLEMENTS; TRUSTS AND TRUSTEES; WILLS.

## TENDER.

See CONTRACT; MONEY; MORTGAGE.

**I. Computation of Time—Continued.**

1908. No claim for compensation was made by him till May 24th, 1909, when two claims were lodged on his behalf, the first at 5.30 p.m., the second at 11 p.m.

HELD—that the claim was made in time.

PEGGIE v. WEMYSS COAL CO., LD., [1910]  
[S. C. 93; 47 Sc. L. R. 149—Ct. of Sess.]

**II. SUNDAY OBSERVANCE.**

See also DEPENDENCIES, No. 3.

2. *Sunday Trading—Prosecution—Consent of Chief Officer of Police—Superintendent Appointed to Act in Absence of Chief Constable—Sufficiency of Consent of Superintendent—Sunday Observation Prosecution Act, 1871 (34 & 35 Vict. c. 87), ss. 1, 2, and Sched.*—By sect. 1 of the Sunday Observation Prosecution Act, 1871, no prosecution shall be taken against any person for any offence under the Sunday Observance Act, 1677 (29 Car. 2, c. 7), except with the consent in writing of the chief officer of police of the police district, or of two justices or a stipendiary magistrate having jurisdiction in the place.

HELD—that for the purpose of giving such consent the chief officer of police is a *persona designata*, and the consent cannot be given by the police officer who by the resolution of a council has been duly appointed to act in the absence of the chief officer as deputy for the chief officer and who is in fact so acting.

R. v. HALKETT, EX PARTE BUTNICK, [1910] 1  
[K. B. 50; 79 L. J. K. B. 12; 101 L. T. 603;  
74 J. P. 12—Div. Ct.]

**TITHES.**

See ECCLESIASTICAL LAW.

**TOLLS.**

See HIGHWAYS; MARKETS AND FAIRS;  
WATERS AND WATERCOURSES.

**TORTS.****I. IN GENERAL.**

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**TRADE AND TRADE UNIONS.**

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**V. TRADE UNIONS.**

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**I. TRADE NAME.**

See MEDICINE, No. 6; TRADE MARKS, II.

**II. TRADE CUSTOMS.**

[No paragraphs in this vol. of the Digest.]

**III. TRADE COMBINATION.**

1. *Agreement to keep up Prices—Restraint of Trade—Injunction.*—An agreement between a number of traders not to sell certain specified goods below certain specified prices is not necessarily unenforceable, as being in restraint of trade. Such an agreement, if bounded by reasonable limits of space and time, and made with a view to protecting local trade, as far as it may be legitimately protected, will, if necessary, be enforced by injunction against parties to the agreement who violate its provisions. Each case in which the question of restraint of trade or partial restraint of trade arises must be considered in the light of its own facts and circumstances.

*Urnston v. Whitelegg* ((1890) 63 L. T. 455) and *Mogul Steamship Co. v. McGregor, Gow & Co.* ([1892] A. C. 25) distinguished.

CADE v. DALY, [1910] 1 I. R. 306—Meredith,  
[M. R., Ireland.]

**IV. RESTRAINT OF TRADE.**

See also No. 1, *supra*, No. 5, *infra*;  
MASTER AND SERVANT, No. 142;  
SOLICITORS, No. 13.

2. *Covenant—Reasonableness—Traveller for Hop Merchants not to Solicit Orders from Customers after Termination of Agreement—Soliciting Orders for Malt.*—By an agreement made between the plaintiffs, who were hop merchants, and the defendant it was provided, *inter alia*, that the defendant should not "for a period of five years after the determination of this agreement directly or indirectly either as principal, agent, or servant, either on his own account or for or on behalf of any other person, sell to or offer for sale, or be interested or concerned in the sale, or solicit orders for any goods or marketable commodity whatsoever from, or call upon, or have, or be interested or concerned in any business dealings or transactions with any brewers, customers, or persons from whom he may have obtained or solicited orders, or upon whom he may have called whilst in the employ of the employers during the currency of this

#### IV. Restraint of Trade—Continued.

agreement or during his employment prior to the date hereof." The defendant having within five years of the termination of his service solicited orders for malt from customers upon whom he had called for the sale of hops when in the plaintiffs' service, and having stated that he intended to continue doing so, the plaintiffs claimed an injunction.

**HELD**—that the covenant was unreasonably wide and not reasonably necessary for the protection of the plaintiffs' business, and that the plaintiffs were not entitled to an injunction.

Decision of Eady, J. (54 Sol. Jo. 721) reversed.  
**MORRIS & Co. v. RYLE**, 103 L. T. 545; 26 [T. L. R. 678; 54 Sol. Jo. 748—C. A.]

**3. Monopoly—Chartered Company—Exclusive Licence—Grant of Monopoly of Trade—Ultra vires.**—By the charter incorporating the plaintiff company it was provided that "nothing in this our charter shall be deemed to authorise the company to set up or grant any monopoly of trade." The plaintiffs agreed to grant to the defendants an exclusive licence to work all diamondiferous ground in the plaintiffs' territories.

**HELD**—that the prohibition in the charter had no application to the exercise by the plaintiffs of their proprietary rights, and therefore that the agreement to grant an exclusive licence to the defendants was not void as being *ultra vires*.

**BRITISH SOUTH AFRICA Co. v. DE BEERS**  
 [CONSOLIDATED MINES, LD., [1910] 1 Ch. 354;  
 79 L. J. Ch. 345; 102 L. T. 95; 26 T. L. R. 285; 54 Sol. Jo. 289; 17 Manson. 190—  
 Eady, J.]

See S. C. in C. A. under COMPANIES, IX. (a).

**4. Covenant not to Carry on Business of "Provision Merchant"—Manufacture and Sale of Margarine.**—A covenant not to carry on or to be interested in the business of a provision merchant within a certain area is not broken by the manufacture and sale of margarine in the prohibited area.

**LOVELL AND CHRISTMAS, LD. v. WALL**, 103 [L. T. 588; 27 T. L. R. 94; 55 Sol. Jo. 92—  
 Eve, J.]

#### V. TRADE UNIONS.

See also DISCOVERY, No. 3; MASTER AND SERVANT, No. 137; PRACTICE, No. 20.

##### (a) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

##### (b) Rules.

See also PRACTICE, No. 20.

**5. Parliamentary Representation—Compulsory Levy—Objects—Rules—Ultra vires.**—It is not within the powers of a trade union registered under the Trade Union Acts, 1871 (34 & 35 Vict. c. 31) and 1876 (39 & 40 Vict. c. 22), either by its original objects or by amendment of its rules, to provide for the maintenance of Parliamentary representation by means of a compulsory levy on its members.

Y. D.

**Per Lord Shaw**—An agreement by which a member of Parliament agrees always to vote in a prescribed manner in consideration of certain payments towards his election expenses and support is void as being against public policy.

Decision of C. A. ([1909] 1 Ch. 163; 78 L. J. Ch. 204; 99 L. T. 945; 25 T. L. R. 107; 53 Sol. Jo. 98) affirmed.

**AMALGAMATED SOCIETY OF RAILWAY SERVANTS v. OSBORNE**, [1910] A. C. 87; 79 L. J. Ch. 87; 101 L. T. 787; 26 T. L. R. 177; 54 Sol. Jo. 215; 47 Sc. L. R. 613—H. L.

**6. Action Claiming Benefits by Personal Representative of Deceased Member—Trade Union Acts, 1871 (34 & 35 Vict. c. 31), s. 4, and 1876 (39 & 40 Vict. c. 22), s. 10—Provident Nominations and Small Intestacies Act, 1883 (46 & 47 Vict. c. 47), s. 7.**—Sect. 4 of the Trade Union Act, 1871, which prevents legal proceedings being taken by a member of a trade union on an agreement to pay benefits, applies equally to prevent the personal representative of a deceased member taking such proceedings; and this is not affected by sect. 7 of the Provident Nominations and Small Intestacies Act, 1883.

**RUSSELL v. THE AMALGAMATED SOCIETY OF [CARPENTERS AND OTHERS]**, 25 T. L. R. 520—  
 Phillimore, J.

On appeal, affirmed on the ground that the rules of the defendant society were illegal at common law, as being substantially in restraint of trade, and therefore could not be enforced by action.

[1910] 1 K. B. 506; 79 L. J. K. B. 507; 102 [L. T. 119; 26 T. L. R. 228; 54 Sol. Jo. 213—  
 C. A.]

**7. Action to Enforce Benefits—Illegality of Association—Restraint of Trade—Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 4.**

**HELD**—on the construction of the defendant society's rules, that it was an illegal association at common law as being in restraint of trade, and therefore that a member could not maintain an action against the society to enforce benefits under the rules.

**Russell v. Amalgamated Society of Carpenters and Joiners** (*supra*) applied.

**MUDD v. GENERAL UNION OF OPERATIVE [CARPENTERS AND JOINERS]**, 103 L. T. 45; 26 T. L. R. 518—Lord Coleridge, J.

**8. Action to Enforce Benefits—Claim for Rescission of Resolution for Expulsion of Member—Illegality of Association—Restraint of Trade—Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 4.**—The plaintiff claimed (1) a declaration that a resolution of the executive committee of the defendant society that he be expelled from the society was *ultra vires* and illegal; and (2) an injunction restraining the defendants from acting upon or enforcing that resolution.

**HELD**—on a construction of its rules, that the society was illegal at common law as being in restraint of trade, and that the Court had no jurisdiction to entertain the action, which was proceeding instituted with the object of



## V. Trade Unions—Continued.

directly enforcing what was in effect an agreement for the application of the funds of a trade union to provide benefits to members within the meaning of sect. 4, sub-sect. 3 (a), of the Trade Union Act, 1871.

OSBORNE v. AMALGAMATED SOCIETY OF RAIL-  
[WAY SERVANTS, 27 T. L. R. 115—Warring-  
ton, J.]

## (c) Conspiracy.

9. *Intimidation—Relevancy—General Conviction—Conspiracy and Protection of Property Act, 1875* (38 & 39 Vict. c. 86), s. 7—*Trades Disputes Act, 1906* (6 Edw. 7, c. 47), s. 2 (1).—A complaint charged seven persons that they, with a view to compelling two others to abstain from doing work which they had a legal right to do, on certain dates wrongfully and without legal authority did persistently follow the two others from the working place to their homes and from their homes to the working place, “and” did watch and beset the working place and their homes at the hours when they had to leave the working place to go home and their homes to go to the working place, “contrary to the Conspiracy and Protection of Property Act, 1875, sect. 7.”

HELD—that sect. 7 of the Conspiracy and Protection of Property Act, 1875, created only one offence, although in its sub-sections it set forth different modes in which that offence might be committed, and consequently that the complaint was relevant although it set forth no particular sub-section and sought a general conviction; that sect. 2, sub-sect. 1, of the Trades Disputes Act, 1906, did not alter the offence created by the Act of 1875, but merely made valid a defence which might and must be established by the evidence, and consequently that intimidation need not be averred in the complaint; and that, the “persistently following” and the “watching and besetting” not being alternative charges, a general conviction of the contravention charged was valid.

WILSON v. RENTON, [1910] S. C. (J.) 32; 47  
[Sc. L. R. 209; 6 Adam. 166—Ct. of Justy.]

## (d) Offences.

[No paragraphs in this vol. of the Digest.]

## TRADE MARKS AND TRADE NAMES.

COL.

## I. REGISTRATION.

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## I. REGISTRATION.

See also No. 19, *infra*.

## (1) Application.

See also I. (2), I. (3), *infra*.

1. *Distinctive Mark*—“*Primus*”—*Long Continued User—Practice—Form of Order—Trade Marks Act, 1905* (5 Edw. 7, c. 15), s. 9.]—The Court, without determining the question whether or not the word “*Primus*” was a distinctive mark, granted leave to the applicants to proceed with its registration as a trade mark for their wickless paraffin stoves, in connection with which they had used the word for seventeen years.

The proper form of order in such cases is “the Court directs that the application be accepted,” not that the mark “be deemed a distinctive mark.”

IN RE AKTIEBOLAGET B. A. F. HJORTH & CO.’S  
[TRADE MARK “PRIMUS,” [1910] 2 Ch. 64;  
79 L. J. Ch. 448; 26 T. L. R. 463; 54 Sol. Jo.  
476; 27 R. P. C. 461—Eady, J.]

## (2) Invented or Descriptive Name: Secondary Meaning.

See also No. 1, *supra*.

2. “*Distinctive Mark*”—*Geographical Name—Trade Marks Act, 1905* (5 Edw. 7, c. 15), s. 9, sub-ss. 4, 5.]—The applicants, who carried on business at San Francisco as the California Fig Syrup Company, introduced a medicinal preparation into this country some twelve or thirteen years ago, and this preparation had been continuously sold here under the name “California Syrup of Figs.” The name was on the bottles in which the preparation was sold, and it was used in the advertisements which had been extensively issued by the applicants. The name “California Syrup of Figs” did at the present time distinguish the manufacture of the applicants from other preparations of similar manufacture in this country.

HELD—that, without saying that the mark was distinctive or that it ought to be registered,

### I. Registration—Continued.

the applicants should not be precluded from endeavouring to obtain registration of the mark.

Decision of Warrington, J. ([1909] 2 Ch. 99; 78 L. J. Ch. 545; 100 L. T. 875; 25 T. L. R. 539; 26 R. P. C. 436) reversed.

IN RE CALIFORNIA FIG SYRUP CO.'S APPLICATION, [1910] 1 Ch. 130; 79 L. J. Ch. 211; 101 L. T. 587; 26 T. L. R. 100; 54 Sol. Jo. 100—C. A.

3. "*Distinctive Mark*"—*Laudatory Epithet*—"*Perfection*"—*User*—*Trade Marks Act*, 1905 (5 Edw. 7, c. 15), s. 9.]—An ordinary laudatory epithet is not adapted to distinguish goods of a particular proprietor, and therefore is not capable of being registered as a trade mark; whether in any particular case the word is or is not something more than a laudatory epithet is for the tribunal to decide. If it is open to doubt, the tribunal, that is, in the first place, the Board of Trade, whose preliminary order is necessary, may direct the application for registration to proceed; but if the tribunal is satisfied that the word is purely laudatory, the application ought not to be allowed to proceed, and if the application has been allowed to proceed it ought to be refused at the second stage.

Such words as "good," "best," "perfection," cannot be distinctive marks within sect. 9 (5) of the Trade Marks Act, 1905, notwithstanding long user of such a word in connection with the applicants' soap.

Decision of Eady, J. ([1910] 1 Ch. 118; 25 T. L. R. 643; 26 R. P. C. 561) affirmed.

IN RE JOSEPH CROSFIELD & SONS, LD.'S APPLICATION, [1910] 1 Ch. 130; 79 L. J. Ch. 211; 101 L. T. 587; 26 T. L. R. 100; 54 Sol. Jo. 100—C. A.

4. "*Orlwoola*"—*Words Misspelt*—*Not Registrable*—*Rectification of Register*—*Trade Marks Act*, 1905 (5 Edw. 7, c. 15), ss. 9, 35, 36, 44.]—A word, not being an invented word, ought not to be put on the register if its spelling is phonetic and it resembles in sound a word which when properly spelled could not be put on the register.

In 1899 and 1900 the respondents' predecessors in business registered the word "Orlwoola" as a trade mark under the Patents, Designs, and Trade Marks Act, 1888, and the mark had ever since been continuously used by the respondents, and had become identified with a woollen material manufactured by them. There was no evidence that the registration of the mark had caused any deception or given rise to any confusion or inflicted any hardship upon other traders. The applicants asked for the register to be rectified by the expunging of the mark. The respondents had disclaimed the words "all wool."

HELD—that the word "Orlwoola" was not an "invented word" under the Patents, Designs, and Trade Marks Act, 1888, or the Trade Marks Act, 1905, that it was not registrable under the Act of 1905 as a "distinctive mark," and that it must be expunged from the register.

Decision of Eve, J. (25 T. L. R. 695; 53 Sol. Jo. 672; 26 R. P. C. 681) reversed.

IN RE H. N. BROCK & CO., LD., [1910] 1 Ch. 130; 79 L. J. Ch. 211; 101 L. T. 587; *sub nom.* IN RE TRADE MARKS NOS. 221722, 230405, and 230407, 26 T. L. R. 100; 54 Sol. Jo. 100—C. A.

5. "*Distinctive Mark*"—*Technical Word*—"*Diamine*"—*Trade Marks Act*, 1905 (5 Edw. 7, c. 15), s. 9.]—A technical word which is descriptive of the character of goods cannot be registered as a trade mark under the Trade Marks Act, 1905, although it would only convey a meaning to persons having special knowledge.

The applicants, who had used the word "Diamine" in connection with their dyes for twenty years, applied for its registration as their trade mark. There was strong evidence to show that diamine dyes were known in the trade as the applicants' dyes.

HELD—that, as the word "Diamine" was a known technical English word, the applicants were not entitled to have a monopoly of its use.

IN RE LEOPOLD CASSELLA & CO. GESELLSCHAFT MIT BESCHRÄNKTER HAFTUNG, [1910] 2 Ch. 240; 79 L. J. Ch. 529; 102 L. T. 792; 26 T. L. R. 472; 54 Sol. Jo. 505; 27 R. P. C. 453—C. A.

6. "*Distinctive Mark*"—"*Gramophone*"—*Popular Name of Article*—*User*—*Trade Marks Act*, 1905 (5 Edw. 7, c. 15), s. 9 (5).]—An application under sect. 9, sub-sect. 5, of the Trade Marks Act, 1905, in effect admits that the word sought to be registered (not being a geographical name or a surname) has some direct reference to the character or quality of the goods in respect of which it is proposed to be registered.

The name by which an article is popularly known ought not to be admitted to registration as a trade mark for that article although in the trade the name may have come to connote the source of manufacture.

The word "Gramophone" held not to be a distinctive mark within sect. 9, sub-sect. 5, of the Trade Marks Act, 1905, and leave to proceed with an application to register it refused.

IN RE GRAMOPHONE CO.'S APPLICATION, [1910] 2 Ch. 423; 79 L. J. Ch. 658; 103 L. T. 107; 26 T. L. R. 597; 54 Sol. Jo. 680; 27 R. P. C. 689—Parker, J.

7. "*Distinctive Mark*"—"*Itala*"—*Order to Proceed*—*Trade Marks Act*, 1905 (5 Edw. 7, c. 15), s. 9 (5).]—The word "Itala" deemed to be a distinctive mark within sect. 9, sub-sect. 5, of the Trade Marks Act, 1905, for the purposes of an application before the registrar for registration as a trade mark.

IN RE ITALIA FABRICA DI AUTOMOBILI'S APPLICATION, [1910] W. N. 170; 54 Sol. Jo. 652; 27 R. P. C. 493—Parker, J.

8. "*Standard*"—*Canada*—*Canadian Trade Mark and Design Act*, 1879.]—The word "standard" cannot properly be registered as a trade

**I. Registration—Continued.**

mark under the Canadian Trade Mark and Design Act, 1879.

STANDARD IDEAL CO. v. STANDARD SANITARY [MANUFACTURING CO., 103 L. T. 440; 27 T. L. R. 63; 27 R. P. C. 789—P. C.

See S. C. DEPENDENCIES, No. 11.

**(3) Alteration and Rectification.**

9. "*Chartreuse*"—*Passing off*—*French Law of Associations—Vesting of French Business in Liquidator—Right to English Trade Marks.*—The appellant, the liquidator of the property of the dissolved congregation of the Carthusian monks settled at La Grande Chartreuse, was as such entitled to the trade marks in France in connection with the liqueur known as "*Chartreuse*."

HELD—that he was not entitled to be registered as proprietor of the trade marks in England in connection with that liqueur, and that the register must be rectified accordingly.

Decision of C. A. ([1908] 2 Ch. 715; 78 L. J. Ch. 181; 98 L. T. 197; 25 R. P. C. 265) affirmed.

LECOOUTURIER AND OTHERS v. REY AND [OTHERS, [1910] A. C. 262; 79 L. J. Ch. 394; 102 L. T. 293; 26 T. L. R. 368; 54 Sol. Jo. 375; 27 R. P. C. 268; 47 Sc. L. R. 892—H. L.

10. *Alteration of Old Mark—"Royal"*—*Company Incorporated by Royal Charter—Legal Designation of Company—Trade Mark Rules, r. 12—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 9.*—The Carron Company, which was incorporated by royal charter in 1773, and had a registered trade mark, adopted in 1901 a new device on their seal by adding the words "*Incorporated by Royal Charter, 1773*," and they now applied for registration of an alteration in their trade mark by the addition of the words quoted above. The registrar refused the application, holding that as the appearance of the word "*Royal*" on a trade mark was absolutely prohibited by rule 12 of the Trade Mark Rules he could not allow an old mark to be so altered.

HELD—(1) that the proposed addition was not part of the correct legal designation of the company and therefore was not entitled to registration as such under sect. 9 of the Trade Marks Act, 1905; and (2) that the present application must be treated as relating to a new mark, and that under rule 12 of the Trade Mark Rules the registrar had rightly refused to allow the registration of the word "*Royal*."

IN RE AN APPLICATION OF THE CARRON CO., [26 T. L. R. 458; 54 Sol. Jo. 476; 27 R. P. C. 412—Eady, J.

**II. DECEPTION.****(1) By use of Same Trade Name.**

See also No. 9, *supra*.

11. *Passing off Action—Inferential Damage—Injunction—Parties.*—The owner of a trade name, which he uses for trading in a certain kind

of goods, cannot as a rule prevent another person from using that name for the purpose of trading in goods of a different nature; but he can prevent him from using it for goods, in which he does not deal, when he can show that such a use of the name by the other person might lead the public to believe that these goods were of his manufacture or merchandise. If the proof of damage be necessary to support the action, inferential damage would arise from the use of the name by the second person, as it would put the reputation of the owner of the trade name in the hands of a person over whom he had no control.

The plaintiffs manufactured and sold pneumatic tyres for bicycles, but they had never manufactured or sold tyres for motor cars. By extensively advertising for many years their tyres under the name of "*Warwick*," they had caused that name in connection with tyres to represent both to the trade and to the public tyres of their manufacture and merchandise. In an action for an injunction to restrain the defendants, whose manager's name was Warwick, from using that name for the sale of their motor-car tyres:—

HELD—that the plaintiffs were entitled to the injunction.

The plaintiffs, by a memorandum of agreement, had entered into a working agreement with another company whereby the latter were to carry on the plaintiffs' business for a period of seven years:—

HELD—that, as the plaintiffs had only given the other company a right to deal in their goods for a limited time, any right that the plaintiffs had acquired in the name of "*Warwick*" remained, after the agreement, vested in them, and only they could sue for the protection of their trade name.

WARWICK TYRE CO., LD. v. NEW MOTOR AND [GENERAL RUBBER CO., LD., [1910] 1 Ch. 248; 79 L. J. Ch. 177; 101 L. T. 889; 27 R. P. C. 161—Neville, J.

12. *Descriptive Name—Description of Article Sold—Likelihood of Deception—Interdict—Terms of Interdict.*—A descriptive name, although in *initio* its exclusive use is due to patents, may become so exclusively associated with the goods of a particular manufacturer A. as to acquire a secondary meaning denoting goods of his manufacture alone. A. is then entitled to interdict B. from using the name as descriptive of, or in connection with, similar goods, not of A.'s manufacture, sold or offered for sale by B., without clearly distinguishing such goods from the goods of A. A., however, is not entitled to a declarator that he has the exclusive right to use the name in connection with such goods, nor to an unqualified interdict. CHARLES P. KINNELL & Co., LD. v. A. BAL- [LANTINE & SONS AND OTHERS, [1910] S. C. 246; 47 Sc. L. R. 227; 27 R. P. C. 185—Ct. of Sess.

**(2) By Colourable Imitation of Name.**

13. *Similarity of Name—Calculated to Deceive—Secondary Meaning.*—The plaintiff, in 1900,

### 11. Deception—Continued.

started an advertising business, which he had since carried on under the name or style of the "Trade Extension Co." In 1909 the defendants started a similar business, which was carried on under the name of the "Expansion of Trade (Limited)."

**HELD**—that the plaintiff's trade name had not acquired a secondary meaning as denoting the plaintiff's business, and that the name of the defendant company was not calculated to deceive.

ELLIOTT v. EXPANSION OF TRADE, LD., 54 Sol. [Jo. 101; 27 R. P. C. 54—Eve, J.

### (3) By Colourable Imitation of Label, Design, or Get-up.

See also No. 16. *infra*.

**14. Imitation—Get-up of Article—Laundry Blue on Stick—Trader's Name not Marked on Article.**—The plaintiffs had for many years manufactured and sold laundry blue and tints put up in little bags, not marked with their names, with a stick protruding for the convenience of immersing and mixing the contents with water without staining the fingers. The plaintiffs claimed that the presence of the stick had come to be a means by which the public recognised, and were in the habit of asking for, their goods. No other makers used this stick till the defendants began to do so in 1909, with goods manufactured by them, on which their name appeared. In an action claiming an injunction:—

**HELD**—that the plaintiffs were not entitled to an injunction, inasmuch as they had not an exclusive right in the get-up of the article and inasmuch as the article manufactured and sold by the defendants, and on which their name appeared, was not such that, in the ordinary course of things, a person with reasonable apprehension and with proper eyesight would be deceived.

Decision of Eady, J. (26 T. L. R. 588; 27 R. P. C. 671) reversed.

W. EDGE & SONS, LD. v. W. NICCOLLS & SONS, [LD., [1911] 1 Ch. 5; [1910] W. N. 250; 103 L. T. 579; 27 T. L. R. 101—C. A.

**15. Embossment of Trade Name on Bottle—Beer not Bottled by the Plaintiffs—Injunction.**—The Court granted an injunction to the plaintiffs, who bottled beer or stout not of their own manufacture, to restrain the defendants from infringing the plaintiffs' trade name and reputation by selling beer or stout, not bottled by the plaintiffs, in bottles having the plaintiffs' trade name moulded or embossed on the glass.

LYLE & KINAHAN, LD. v. QUINN, 44 I. L. T. [133—Barton, J. (Ireland).

See also No. 17. *infra*.

### III. CONDUCT FACILITATING DECEPTION.

[No paragraphs in this vol. of the Digest.]

### IV. MISREPRESENTATIONS BY ADVERTISEMENT, ETC.

**16. Passing Off—Misleading Description—Necessity for Identity with Accepted Description of Definite Class of Plaintiff's Goods.**—In order to succeed in a "passing-off" action, the plaintiff must prove, where there is no express representation, that the name or get-up, or whatever it may be by which the defendant seeks to describe his goods, is the proper and accepted description of a definite article or class of articles belonging to the plaintiff. Further, the whole of the description used by the defendant must be looked at.

The plaintiffs were wine shippers and merchants with a high reputation for many years, both with the trade and the public, as selling in bottles wine which had been matured in wood in their cellars. They sold two classes of wine, one at prices varying from about £50 to £60 a pipe, and the other at prices between £20 and £30 a pipe. The defendants were retail wine merchants, who advertised largely, and professed to sell wines at lowest wholesale market prices. In a price list issued by them they offered for sale "140 doz. Hunt Roope's Grand Old Crusted Port, over six years in bottle; fine colour and flavour, fruit, beautifully matured wine; usual credit price per dozen, 60s.; now offered by us at per dozen 34s."

The plaintiffs brought an action claiming an injunction to restrain the defendants from issuing this or similar price lists or circulars, on the ground that the effect of the price list was to make people believe, in buying the wine of the plaintiffs there described, that they were buying the higher-priced and not the cheaper wine of the plaintiffs. Upon the evidence, it was held that 34s. a dozen was a fair retail price for the wine sold by the defendants, but that 60s. would be an exaggerated credit price.

**HELD**—that, the plaintiffs not having established that there was any wine of theirs matured in bottle to which the description "usual credit price per dozen 60s." could properly be applied, and the defendants having sufficiently distinguished the wine sold by them from any wine of the plaintiffs that could be so described, the plaintiffs' action failed.

HUNT, ROOPE, TEAGUE & CO. v. EHRMANN [BROTHERS, [1910] 2 Ch. 198; 79 L. J. Ch. 533; 103 L. T. 101—Warrington, J.

### V. FALSE TRADE DESCRIPTION: MERCANDISE MARKS ACT, 1887.

**17. Bottle with Brewer's Name Embossed—Used for Bottling Beer of Another Brewer—Label Placed on Bottle—Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), ss. 2, 3, 5.**—The appellant, who was a bottler of Bass's ale, which came to him in hogsheads, bottled and sold some of the ale in bottles on which the name of the Felinfoel Brewery Company was embossed, and he affixed thereon a Bass's label with the words "Bottled by Horatius Stone." The Felinfoel Brewery Company had not given the appellant authority to use bottles bearing their name,



### V. False Trade Description: Merchandise Marks Act, 1887—Continued.

and notice had some time previously been given to the appellant by a trade protection association warning him against the use of bottles moulded with the name of any member of the association. In proceedings under the Merchandise Marks Act, 1887, the justices found (1) that the appellant had no right to use bottles belonging to the Felinfoel Brewery Company; (2) that the name of that company on the bottles was calculated to deceive, and that such name was a false name and had been affixed to the goods sold by the appellant within the meaning of sects. 2 and 3 of the Act; and (3) that the appellant had not acted innocently. They accordingly convicted the appellant.

**HELD**—that the conviction could be supported under sect. 5 (c) of the Act, and that an appeal therefrom should therefore be dismissed.

STONE v. BURN, 103 L. T. 540; 74 J. P. 456; [27 T. L. R. 6—Div. Ct.]

See also No. 15. *supra*.

### VI. PRACTICE.

#### (1) In General.

[No paragraphs in this vol. of the Digest.]

#### (2) Costs.

[No paragraphs in this vol. of the Digest.]

#### (3) Trifling Offences.

18. *Professional Designation*.—"Member of the Society of Architects"—*Injunction*.]—The plaintiff society was incorporated in 1893 as a company limited by guarantee, and had for its object the promotion of architectural art and practice and the maintenance of the honour and interests of the architectural profession. The members adopted and used as their professional designation the term "Member of the Society of Architects," using the letters "M. S. A." as an abbreviation. The defendant, an architect who was not a member of the society, having used the letters "M. S. A." as a professional designation, the plaintiffs sought an injunction, alleging that the said letters had acquired a definite meaning and value, and that the unauthorised use of them would damage the society.

**HELD**—that the matter was too trivial for an injunction, and that the principle of *Society of Accountants and Auditors v. Goodway* ([1907] 1 Ch. 489) ought not to be extended.

SOCIETY OF ARCHITECTS v. KENDRICK, [1910] [W. N. 113; 102 L. T. 526; 26 T. L. R. 434—Joyce, J.]

### VII. MISCELLANEOUS.

19. *Innocent Infringer—Consent to Perpetual Injunction—Right to Account of Profits or Damages—Register of Trade Marks—Notice*.]—The Trade Marks Acts have not altered the principle laid down in *Edelsten v. Edelsten* ((1863) 1 De G. J. & S. 185), and the registered proprietor of a trade mark is not entitled to an account of profits or damages against an innocent infringer, but only to an injunction.

The register of trade marks is not notice to all the world of registration of a trade mark.

SLAZENGER & SONS v. SPALDING AND [BROTHERS, [1910] 1 Ch. 257; 79 L. J. Ch. 122; 102 L. T. 390; 27 R. P. C. 20—Neville, J.]

## TRAMWAYS AND LIGHT RAILWAYS.

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See also INCOME TAX. No. 11.

### I. BYE-LAWS.

1. *Distance between One Car and Another following—Bye-Law leaving Regulation of Distance to Police—Mandamus—Sufficiency of Interest—Manchester Corporation Tramways Act, 1900 (63 & 64 Vict. c. cxcxi.), s. 44—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 46.*]—Sect. 44 of the Manchester Corporation Tramways Act, 1900, provides that the Manchester Corporation shall, with regard to certain tramways taken over by them, make bye-laws under the Tramways Act, 1870, "prescribing the distances at which carriages using the tramways shall be allowed to follow one after the other."

**HELD**—that a bye-law, whether or not sanctioned by the Board of Trade, which left the regulation of such distances to the police was not a bye-law made in compliance with sect. 44 of the special Act.

**HELD ALSO**—that the "National Motor Carriage and Horse Owners Accident Insurance Union, Limited," were sufficiently interested in the matter to be entitled to a *mandamus* directed to the corporation to make bye-laws in compliance with the special Act.

R. v. MANCHESTER CORPORATION, EX PARTE [WISEMAN, 130 L. T. Jo. 179—Div. Ct.]

### II. CONSTRUCTION AND MAINTENANCE.

See also HIGHWAYS, No. 19.

2. *Gas Mains and Pipes—Laying Down. Repairing, etc.—Additional Expense Incurred by Reason of Existence of Tramway—New Pipes—Interruption of Tramway—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 32.*]—An interruption of tramway traffic within the meaning of sect. 32, sub-sect. 2, of the Tramways Act, 1870, is caused when in the case of a double line both up and down traffic has to be carried on a single line, or when tramcars are slowed down or brought to a standstill for a sufficient time to enable workmen to get out of trenches under or near the tram lines.

The additional expense of the following works is recoverable from the promoters under sect. 32

## II. Construction and Maintenance—Continued.

of the Act of 1870: (a) Connecting a new service pipe laid for the first time since the construction of the tramway with a main laid before the construction of the tramway, such connection being an alteration of the main; (b) repairing, altering, or removing a service pipe or a main laid before the tramway was constructed. The additional expense of the following works is not recoverable: (c) Laying down a new service pipe for the first time since the construction of the tramway; (d) repairing, altering, or removing a service pipe laid since the tramway was constructed, the main having been laid before the construction of the tramway.

Decision of Phillimore, J. ([1909] 2 K. B. 297; 78 L. J. K. B. 772; 100 L. T. 909; 73 J. P. 323; 7 L. G. R. 693) affirmed on these points.

*Seem*, the expression "such work" in sub-sect. 5 of sect. 32 means work whereby the traffic on the tramway is interrupted.

IN RE BRISTOL GAS CO. AND BRISTOL TRAMWAYS AND CARRIAGE CO., LD., [1910] 1 K. B. 114; 79 L. J. K. B. 219; 101 L. T. 659; 74 J. P. 35; 26 T. L. R. 75; 54 Sol. Jo. 47; 8 L. G. R. 30—C. A.

**3. Lease of Track—Repair—Contract Between Lessor and Contractor—Negligence of Contractor—Injury to Passengers—Liability of Contractor to Indemnify Lessee Against Claims.**—The Birmingham Corporation leased a certain part of a tramway which they were entitled to work under statutory powers to the plaintiffs. It was a term of the said lease that any repairs which became necessary to the track should be effected by the corporation, subject to the licence of the plaintiffs. Pursuant to a licence duly obtained, the corporation employed the defendant to relay a portion of the track which was leased to the plaintiffs. The running of trams was to continue during the operations. In carrying out this work the contractor was guilty of negligence, as a result of which a tramcar was derailed and overturned, and a number of passengers conveyed by the plaintiffs were injured. The plaintiffs, having compensated the passengers by payment of damages, sought to recover the amounts so paid.

**HELD**—that, the acts of the defendant having injuriously affected both the proprietary rights of the plaintiffs as lessees of the tramway and also their rights of passage on the highway, the defendant was liable to indemnify the plaintiffs.

CITY OF BIRMINGHAM TRAMWAYS CO., LD. v. [LAW, [1910] 2 K. B. 965; 80 L. J. K. B. 80; 103 L. T. 11; 74 J. P. 355; 8 L. G. R. 667—Lawrence, J.]

**4. Private Act—Parliamentary Deposit—Abandonment of Tramroad Scheme—Compensation for Owners of Land Rendered Less Valuable by Abandonment—Non-Construction of Embankment on Marsh Land.**—A tramway company, being about to apply for an Act giving them power to construct a tramroad, entered into an agreement with H. whereby H. agreed not to oppose the bill, and the company agreed,

if they obtained the Act, to construct and maintain an embankment to carry the tramroad over marsh land belonging to H., and so to prevent the ingress of tidal water on the land. The company obtained the Act, which contained a provision that the Parliamentary deposit made on application for the Act should, if the tramroad were not completed, be applied, *inter alia*, as compensation for persons whose property had been rendered less valuable by the commencement, construction, or abandonment of the tramroad. Subsequently the proposed tramroad was abandoned.

**HELD**—that the non-construction of the embankment was not a necessary consequence of the abandonment of the tramroad, and therefore that H.'s property was not rendered less valuable by the abandonment within the meaning of the company's Act so as to entitle him to claim compensation out of the Parliamentary deposit.

Decision of Warrington, J., reversed.

IN RE SOUTHPORT AND LYTHAM TRAMROADS [ACT, 1900, EX PARTE HESKETH, [1911] 1 Ch. 120; [1910] W. N. 256—C. A.]

**5. Consent of Road Authority—Terms—Demand of Way-Leave Rental—Difference—North Dublin Street Tramways Act, 1875 (38 & 39 Vict. c. ccix.), s. 16—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 33.**—A dispute between the Dublin United Tramways Company and the Corporation of Dublin as to the terms upon which the consent of the Corporation of Dublin, as the "road authority," should be given to the construction by the company of a tramway authorised by its special Acts, is a difference within the meaning of a section similar in terms to sect. 33 of the Tramways Act, 1870. Such consent must be given or refused upon reasonable grounds; and the road authority has not an absolute right to withhold its consent for the purpose of exacting a way-leave rental arbitrarily fixed by itself.

R. v. Croydon and Norwood Tramway Co., ((1886) 18 Q. B. D. 39) applied.

*Quere*, whether, in the absence of a special agreement recognised by statute, the road authority has power to demand any way-leave rental for the use of a tram line authorised by statute.

R. (CORPORATION OF DUBLIN) v. FITZ-GIBBON [1910] 2 I. R. 236—Div. Ct., Ireland.

## III. PURCHASE BY LOCAL AUTHORITY.

**6. Statutory Company—Time Limit for Completion of Works—Incomplete Undertaking Sold to London County Council—Whether Undertaking "Abandoned" by Company—Parliamentary Deposits—The Peckham and East Dulwich Tramways Act, 1882 (45 & 46 Vict. c. ccxiii.), ss. 4, 6, 7, 36—The Peckham and East Dulwich Tramways (Extensions) Act, 1883 (46 & 47 Vict. c. ccxxvii.), ss. 19, 22, 23—The Peckham and East Dulwich Tramways Act, 1885 (48 & 49 Vict. c. excix.), ss. 5, 24, 25—The Peckham and East Dulwich Tramways Act, 1887 (50 & 51**

### 11. Purchase by Local Authority—Continued.

*Vict. c. clxxxiii.*, ss. 6, 13—*The Parliamentary Deposits and Bonds Act, 1892* (55 & 56 *Vict. c. 27*), s. 1—*The London County Council (Tramways and Improvements) Act, 1904* (4 *Edw. 7, c. ccxxxi.*), ss. 5, 9, 10.]—A statutory company was authorised by its special Acts of 1882 and 1883 to construct certain tramways. In particular by an Act of 1885 it was empowered to lay a tramway in Rye Lane, Camberwell, with the proviso that no part of such tramway should be constructed until Rye Lane had been widened to the satisfaction of the local and road authorities; and by a special Act of 1887 the time limited by the Act of 1885 for completing the tramway in Rye Lane was extended until the expiration of one year after that lane had been widened. In 1904 Rye Lane had not been widened, and the London County Council under the powers of their special Act of that year (which authorised them to widen Rye Lane and to lay a tramway therein) acquired the incomplete undertaking of the company. On an application by a creditor of the company that the parliamentary deposits in Court under the Acts of 1882, 1883, and 1885, might be applied for the benefit of its creditors:—

HELD—(1) that the words “the undertaking has not been completed” in sect. 1 of the *Parliamentary Deposits and Bonds Act, 1892*, must be read to mean completion by the company; (2) that the company by transferring its undertaking to the London County Council had put an end to its time limit, and had also “abandoned” its undertaking; and, therefore, (3) that the applicant was entitled to an order.

Decision of Neville, J. ([1909] 2 Ch. 540; 78 L. J. Ch. 726; 101 L. T. 226; 73 J. P. 409; 8 L. G. R. 58) affirmed.

IN RE PECKHAM, EAST DULWICH AND CRYSTAL [PALACE TRAMWAYS BILL, [1910] 2 Ch. 1; 79 L. J. Ch. 451; 102 L. T. 689; 74 J. P. 266; 54 Sol. Jo. 458; 8 L. G. R. 571—C. A.

### IV. MISCELLANEOUS.

7. *Accident—Limit of Liability—Breach of Statutory Duty—Alternative Rate—Duty of Tramway Authority to Carry Passengers.*—While proceeding to a seat on the roof of one of the defendants' tramcars, the plaintiff was injured through coming in contact with a standard which was electrically charged owing to a defect which constituted a breach of statutory regulations made by the Board of Trade. At the time the accident happened the plaintiff had not taken his ticket or paid his fare. He knew that a special notice to passengers in the following terms was exhibited in the tramcar:—“Special Notice to Passengers.—Passengers are being carried at less than the maximum authorised charges, and every passenger is notified that in consideration thereof a passenger is only carried on the terms that the maximum amount recoverable from the corporation on account of any injury or damages suffered by a passenger and for which the corporation is legally liable is £25. Except as above, every passenger travels at his own risk.

Passengers can only travel subject to being bound to observe the by-laws for the time being.” The maximum toll which the defendants were entitled to demand could not exceed 1d. per mile; they, in fact, had a toll which they exacted from all passengers alike of less than 1d. per mile, and these tolls they exhibited inside each of their tramcars. They did not offer any alternative to the tolls which they charged. The jury assessed the damages sustained by the plaintiff at £500.

HELD (by Cozens-Hardy, M.R., upon the construction of the statutes regulating the tramway; by Farwell, L.J., upon the ground that the corporation were common carriers of passengers at common law in the sense that they were bound to carry according to their profession; and by Kennedy, L.J., upon both grounds)—that so long as the tramway was open for public traffic the corporation were bound to carry any passenger, not being an objectionable person, who offered himself and was willing to pay the published fare, provided they had accommodation for him, and were not entitled to impose a condition limiting their liability for negligence without giving the passenger the option of travelling at a higher fare without any such condition.

*Semble, per Cozens-Hardy, M.R., and Farwell, L.J.*—If the corporation published alternative lists of fares, one containing the maximum rates, and the other containing reduced rates, and gave an option to the passenger to pay either the full rate without any condition limiting their liability or the reduced rate with such a condition, a passenger electing to pay the smaller rate would be bound by the condition.

Decision of Lord Coleridge, J. (73 J. P. 315; 25 T. L. R. 516) affirmed.

CLARKE v. WEST HAM CORPORATION, [1909] 2 K. B. 858; 79 L. J. K. B. 56; 101 L. T. 481; 73 J. P. 461; 25 T. L. R. 805; 53 Sol. Jo. 731; 7 L. G. R. 1118—C. A.

8. *Costs—Taxation—Light Railways Act, 1896* (59 & 60 *Vict. c. 48*)—*Provisional Order—Parliamentary or Chancery Scale—Charges before Retainer—Deposit of Plans.*—The costs of and connected with the preparation and making of a provisional order under the *Light Railways Act, 1896*, are taxed on the Chancery, and not the Parliamentary, scale.

In *re Morley* ((1875) L. R. 20 Eq. 17) applied.

Decision of Eve, J. ([1909] W. N. 119; 53 Sol. Jo. 617) affirmed.

IN RE PETERSON, [1909] 2 Ch. 398; 79 L. J. [Ch. 53; 101 L. T. 480; 73 J. P. 461; 53 Sol. Jo. 735—C. A.

9. *Corporation Tramways—Power to make Agreement with Adjacent Owners—Agreement to Construct and Work—Agreement not to Assign—Benefit of Agreement—Revocable Licence—Ultra vires—Eccles Corporation Act, 1901* (1 *Edw. 7, c. ccxxii.*), s. 24—*Salford Corporation Act, 1899* (62 & 63 *Vict. c. ccxlv.*), ss. 4, 28—*South Lancashire Tramways Act, 1903* (3 *Edw. 7, c. clviii.*), s. 41—*Tramways Act, 1870* (33 & 34 *Vict. c. 78*), ss. 31, 35.]—By a local Act

**IV. Miscellaneous—Continued.**

the plaintiffs were empowered to enter into contracts with owners of tramways in any adjacent district capable of being worked with the plaintiffs' tramways with respect to the working of their respective tramways or parts thereof. Tramways were constructed within the plaintiffs' area by the Salford Corporation, and worked by them under an agreement which provided for the granting by the plaintiffs to the Salford Corporation of a lease for thirty-five years to run cars with flanged wheels upon the tramways within the borough of Eccles, and also provided, *inter alia*, that the Salford Corporation should not assign, sublet, or part with the benefit of that agreement or the lease, except by licence under the seal of the plaintiffs. Subsequently, the Salford Corporation granted a licence to the defendant company to run cars over a portion of the tramway lying within the borough of Eccles. No licence from the plaintiffs having been applied for or obtained, the plaintiffs asked for a declaration that the Salford Corporation were not entitled to authorise the defendant company to use the plaintiffs' tramway, and for an injunction to restrain the defendant company from running cars over the plaintiffs' tramway.

**HELD**—that the Salford Corporation were not entitled to authorise the defendant company to use the plaintiffs' tramway, and that the plaintiffs were entitled to the injunction claimed.

Decision of Eve, J. ([1910] W. N. 128; 79 L. J. Ch. 275; 102 L. T. 11; 74 J. P. 145; 26 T. L. R. 231; 54 Sol. Jo. 251) reversed.

**ECCLES CORPORATION v. SOUTH LANCASHIRE [TRAMWAYS CO.]**, [1910] 2 Ch. 263; 79 L. J. Ch. 759; 103 L. T. 158; 74 J. P. 345; 26 T. L. R. 498; 54 Sol. Jo. 561; 8 L. G. R. 941—C. A.

in the event of their making an arrest without reasonable cause the railway company, as their employer, is liable to an action for false imprisonment.

**Goff v. Great Northern Ry. Co.** ([1861] 3 E. & E. 672) and **Edwards v. Midland Ry. Co.** ([1880] 50 L. J. Q. B. 281) approved.

**LAMBERT v. GREAT EASTERN RY. CO.**, [1909] [2 K. B. 776; 79 L. J. K. B. 32; 101 L. T. 408; 73 J. P. 445; 25 T. L. R. 734; 53 Sol. Jo. 732—C. A.

**2. Seizure of Goods of Judgment Debtor—Issue of Writ of Fieri Facias after Judgment Debt satisfied—Right of Judgment Debtor to Damages for Trespass.**—A writ of *fi. fa.* was taken out in London by a solicitor on behalf of a judgment creditor for the amount of a judgment debt which as a matter of fact had been paid at an earlier hour on the same day in the country by the judgment debtor. In execution of the writ the sheriff seized the goods of the judgment debtor and remained in possession for twenty-four hours. There was no proof that the judgment creditor or the solicitor acted maliciously in taking out the writ of *fi. fa.*, nor was there any irregularity in the writ itself.

**HELD**—that an action for trespass lay, as a judgment ceases to be of any force or effect when the total amount of the judgment debt has been paid.

Decision of Div. Ct. ([1910] 1 K. B. 374; 79 L. J. K. B. 274; 101 L. T. 911) reversed.

**CLISSOLD v. CRATCHLEY AND ANOTHER**, [1910] [2 K. B. 244; 79 L. J. K. B. 635; 102 L. T. 520; 26 T. L. R. 409; 54 Sol. Jo. 442.—C. A.

**3. Trespass to the Person—Assault and False Imprisonment—Passenger Prevented from Leaving Ferry Company's Wharf without Payment—Notice of Conditions of Carriage—New South Wales.**—The appellant entered the respondents' wharf for the purpose of using their ferry and paid the fare, 1*d.*, at the turnstile. Wishing to leave the wharf without using the ferry, he refused to pay a second 1*d.* demanded on going out again by the turnstile. He endeavoured to get out without paying the 1*d.* and was prevented by the respondents' servants. In consequence he sued the respondents for damages for assault and false imprisonment. A notice board on the wharf announced that 1*d.* must be paid on entering or leaving the wharf, and that no exception would be made to the rule whether the passenger had travelled by the ferry or not.

**HELD**—that the respondents were not bound to provide a gratuitous exit from their wharf, that the respondents' servants were entitled to resist the appellant's forcible passage from their premises by an unauthorised way, and that as no undue violence had been used the appellant was not entitled to recover.

Decision of the High Court of Australia (4 C. L. R. 379) affirmed.

**ROBINSON v. BALMAIN NEW FERRY CO., LD.**, [1910] A. C. 295; *sub nom.* **ROBERTSON v. BALMAIN NEW FERRY CO., LD.**, 79 L. J. P. C. 84; 26 T. L. R. 113—P. C.

**TRANSVAAL.**

See DEPENDENCIES AND COLONIES.

**TREASON.**

See CRIMINAL LAW AND PROCEDURE.

**TREASURE TROVE.**

See CROWN PRACTICE.

**TRESPASS.**

See also ANIMALS, Nos. 9, 10; COMMONS, No. 3; GAME, No. 4; RATES, No. 7.

**1. False Imprisonment—Railway—Special Constables—Liability of Railway.**—Special constables employed by a railway under the authority of an Act of Parliament are servants of the railway company and not of the Crown, and



**TRIAL.**

See CRIMINAL LAW AND PROCEDURE ;  
PRACTICE AND PROCEDURE.

**TRINIDAD.**

See DEPENDENCIES AND COLONIES.

**TROVER AND CONVERSION.**

[No paragraphs in this vol. of the Digest.]

**TRUCK ACTS.**

See MASTER AND SERVANT ; WORK AND  
LABOUR.

**TRUSTS AND TRUSTEES.**

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See also ACTION, No. 1 ; BANKRUPTCY ;  
CHARITIES ; DEEDS ; EDUCATION,  
Nos. 3, 4 ; EXECUTORS ; INFANTS,  
No. 3 ; POWERS ; REAL PROPERTY,  
No. 1 ; SETTLEMENTS ; WILLS.

**I. IN GENERAL.**

1. *Profit out of Trust — Partner — Trustee Member of a Firm by Reason of Trust Estate—Employment of Trustee by the Firm—Salary—Liability to Account to Trust Estate.*—L. was a trustee of his father's will. His father had been one of the managing directors of a partnership firm, and by the will L. was nominated to be a partner in the firm in the place of his father, but he was to hold the share in the partnership to which he thus succeeded upon the trusts of the will. L. had, prior to his father's death, acted as salesman of the firm at a salary. He continued so to act after his father's death, and after his admission as a partner, under an

agreement with the other members of the firm. The agreement to employ L. was made *bona fide*, and was for the interest of the firm, and thus of the trust estate.

**HELD**—that L. received his salary as salesman by virtue of his agreement with the firm, and not by reason of the trusts of the will, and that, consequently, he was entitled to retain the salary in addition to certain remuneration which he obtained under the will for acting as managing partner, and that he need not account for the salary to the trust estate.

*In re Dover Coal Field Extensions, Ltd.* ([1908] 1 Ch. 65) followed.

**IN RE LEWIS, LEWIS v. LEWIS** [1910] W. N. [217 ; 103 L. T. 495 ; 55 Sol. Jo. 29—Warrington, J.

2. *Indemnity—Contribution—Partners Trustees of Lease for Partnership—Transfer of Business to Company—Liability on Covenants in Lease—Right to Indemnity from Cestui que Trust—Novation.*—M. and C., two members of a partnership, became lessees of premises as trustees for the partnership. The business of the firm was transferred to a company, which twenty-two years afterwards became insolvent. M. was the survivor of the two lessees, and his executors had no defence to an action by the lessor on the covenants in the lease, and paid £5,750 and costs £124 7s. in discharge of their liability. In a test case they now claimed contribution from C. in proportion to his share of the partnership.

The defendants said that, as the trustees had assented to the property being transferred to the company, they could not now get an indemnity from anyone except the company. Further, it was argued that at the date of the assignment to the company, the trustees held freehold property and other assets exceeding in value the liability under the lease, and that they should have required a sinking fund or other security against their liability under the lease before handing the property over to the company.

**HELD**—that there was no novation as regards the lease, that the transfer of the business to the company did not release the partnership, the previous *cestui que trust*, and that as all the partners had been parties to the agreement for sale to the company under which the trustees could not have retained anything as security, the plaintiffs were entitled to contribution.

**MATTHEWS v. RUGGLES-BRICE**, [1910] W. N. [234 ; 103 L. T. 491—Eady, J.

3. *Failure of Objects—Trust for Behoof of Firm—Transfer of Business to Limited Company.*—A partner addressed a letter to his firm in which he directed them to hold two-fifteenths of his interest in the firm in trust, and to apply the annual proceeds "for the purpose of rewarding meritorious or long-service employees of our said firm, or for any other purposes of the business, as the managers may in their discretion deem expedient, and they shall be sole judges." Subsequent to the partner's death the business was transferred to a private limited company.

### I. In General—Continued.

**HELD**—that the trust purposes failed when the business was transferred to the limited company, and that the fund fell into intestacy.

**HEDDERWICK'S TRUSTEES v. HEDDERWICK'S [EXECUTORS, [1910] S. C. 333 ; 47 Sc. L. R. 238—Ct. of Sess.**

### II. ACCOUNTS.

**4. Audit of Trust Accounts—Auditor Appointed by Public Trustee—Right to Production of Books and Documents—Public Trustee Act, 1906 (6 Edw. 7, c. 55), s. 13.**—An auditor having been appointed by the Public Trustee to investigate the condition and accounts of a trust estate, the acting trustee declined to produce to the auditor the necessary books and documents except on the terms that the costs of the audit should be borne by those beneficiaries who had asked for it.

**HELD** (1) that the trustee had no right to refuse access to the books and documents by the auditor; and (2), that there was no ground for limiting the audit to capital matters.

**IN RE WILLIAMS, AND IN RE THE PUBLIC [TRUSTEE ACT, 1906, 26 T. L. R. 604—Eady, J.**

### III. APPOINTMENT OF TRUSTEES.

[No paragraphs in this vol. of the Digest.]

### IV. BREACH OF TRUST.

**5. Bankruptcy of Trustee—Trustees Absconding—No other Trustee—Cestui que Trustent Proving for Debt.**—Where trustees have become bankrupt the *cestui que trustent* may prove personally against the bankrupt estate if they obtain the leave of the Court.

**IN RE BRADLEY, EX PARTE WALTON, 54 Sol. Jo. [377—Phillimore, J.**

**6. Misappropriation of Funds by Trustee's Solicitor—Liability of Trustee—Negligence—Authority to Solicitor to Receive Trust Funds—Money Allowed to Remain in Solicitor's Hands—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 17.**—A settled fund was invested upon mortgage, and the mortgage being about to be paid off, the trustee executed a reconveyance, which he handed to his solicitor for the purpose of obtaining payment. The solicitor retained the document for four months, during which he received and misappropriated a large part of the money. The trustee frequently inquired as to its receipt, but was always told that the matter was not yet completed. On the evidence it appeared that the trustee knew the solicitor to have been dilatory and unbusinesslike in the affairs of another trust, he had known nothing to make him suspect the solicitor's actual honesty.

**HELD**—that, believing the solicitor to be honest, the trustee was justified in leaving the reconveyance with him to be used when required; and that his allowing the money to remain for some time in the solicitor's hands did not disentitle him to the protection given by

sect. 17 of the Trustee Act, 1893, inasmuch as he did not know that the money had been paid, and had had no reason to doubt the replies given to his inquiries on the subject by the solicitor. The trustee was therefore not liable for the loss.

**IN RE SHEPPARD, DE BRIMONT v. HARVEY, [1911] 1 Ch. 50; 103 L. T. 424; 55 Sol. Jo. 13—Parker, J.**

### V. CONSTRUCTIVE TRUSTS.

[No paragraphs in this vol. of the Digest.]

### VI. DISTRIBUTION.

**7. Apportionment of Trust Funds among Beneficiaries—Unreasonable Delay—Application to Obtain such Apportionment—Costs of Application—Payment by Trustees Personally—R. S. C. Ord. 65, r. 1.**—Although there may be cases in which there are such difficulties that trustees ought not to be called upon to exercise their power of apportionment of trust funds among the beneficiaries entitled thereto except with the sanction of the Court, yet, unless that state of circumstances exists, trustees are not justified in refusing to sell or appropriate the same, and will be held to have acted unreasonably and improperly in so refusing, and be ordered to pay the costs under Ord. 65, r. 1, of an application to the Court on behalf of the beneficiaries to obtain such apportionment.

Observations on the position of a solicitor-trustee acting unreasonably but with the consent of his co-trustees.

Decision of Warrington, J. affirmed.

**IN RE RUDDOCK, NEWBERRY v. MANSFIELD, [102 L. T. 89—C. A.**

### VII. INVESTMENTS.

**8. Trust for Sale—Power to Retain—Trustees not Agreeing as to Retention—"Company in the United Kingdom"—Company Registered in England Operating Abroad.**—Where stocks and shares are bequeathed to trustees upon trusts for sale and conversion and reinvestment, with power to retain permanently any investments existing at the testator's death, and the trustees cannot agree as to the retention of any such investment, the investment must be sold.

The expression "companies in the United Kingdom" in an investment clause covers a company registered under the Companies Acts and having its head office and directorate in England, whose property and undertaking is in a foreign country.

**IN RE HILTON, GIBBES v. HALE-HINTON, [1909] 2 Ch. 548; 79 L. J. Ch. 7; 101 L. T. 229; 17 Manson, 19—Neville, J.**

### VIII. PRACTICE.

See also EXECUTORS. No. 17: PRACTICE. No. 20.

**9. Vesting Order—Infant—Stock Invested in Joint Names of Infant and Another Person—Infant Beneficially Entitled thereto—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 35, subss. 1 (ii.) (a)—Infants' Property Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 68), s. 32—Trustee Extension Act,**

**VIII. Practice—Continued.**

1852 (15 & 16 Vict. c. 55), s. 3.]—Certain stock to which an infant was beneficially entitled had been invested in the joint names of himself and another person.

**HELD**—that, notwithstanding the difference between the language of sect. 35 (1) (ii.) (a) of the Act of 1893 and that of sect. 3 of the Trustee Extension Act, 1852, the Court had jurisdiction to make an order vesting the right to transfer or call for a transfer of the stock in the infant's guardian.

*In re Harwood* ((1882) 20 Ch. D. 536) and *In re Barnett's Estate* ([1889] W. N. 216; 61 L. T. 676) approved.

Decision of Joyce, J. reversed.

**IN RE DEHAYNIN (INFANTS)**, [1910] 1 Ch. [223; 79 L. J. Ch. 131; 101 L. T. 703—C. A.

**10. Settlement Action for Administration—Compromise—Fund Carried to Separate Account.**—In the compromise of an action by the mortgagee of a life interest under a settlement against the trustees for administration, it was agreed (*inter alia*) that certain funds subject to the trusts of the settlement be paid into court by the trustees to an account entitled "The shares of the P. Company and its incumbrancers, subject to the life interest of H. and her mortgagee."

**HELD**—that the carrying over to the separate account was not equivalent to a transfer of the stocks and securities or payment of the proceeds thereof by the trustees to the company.

*Thorndike v. Hunt* ((1859) 3 De. G. & J. 563) distinguished.

Decision of Neville, J. ([1910], W. N. 163; 79 L. J. Ch. 640; 103 L. T. 131) affirmed.

**CLOUTTE v. STOREY**, [1911] 1 Ch. 18; [1910] [W. N. 250; 103 L. T. 617—C. A.

**IX. RESULTING TRUST.**

*See* HUSBAND AND WIFE, No. 10; PRACTICE, No. 20.

**X. TRUSTS FOR SALE, ETC.**

*See also* EXECUTORS, No. 17.

**11. Trust to Convert Realty—Election to Reconvert—Subject of the Trust a Remainder.**—Mere lapse of time without conversion being effected, if unexplained, coupled with slight reasons for permanent retention as land, may give rise to the inference that it was the intention of the person absolutely entitled to a remainder the subject of a trust for conversion to retain such remainder unconverted.

**SMITH v. GUMBLETON**, 54 Sol. Jo. 181—[Neville, J.

Reversed on appeal (see [1910] W. N. 72)—C. A.

**12. Power of Granting Leases—"Building or Other Leases"—Unopened Mines.**—The testatrix, who was the owner or part owner of coal mines, some of which were unopened, by her will, in which there was no express reference to

mines, empowered her trustees, whilst any of her real or leasehold estate remained unsold, to let and manage and to join with any other person or persons in letting and managing all such part or parts thereof as for the time being remained unsold, and she also empowered her trustees "to grant any building or other leases thereof or of any part thereof for such term, at such rents, and upon such conditions" as they might think fit.

**HELD**—that although the trustees had power to join with the other parties entitled in granting leases of mines already opened, they had no power to join in the granting of leases of unopened mines.

*Clegg v. Rowland* ((1866) L. R. 2 Eq. 160) followed; *Daly v. Beckett* ((1857) 24 Beav. 111) not followed.

**IN RE BASKERVILLE. BASKERVILLE v. BASKERVILLE**, [1910] 2 Ch. 239; 79 L. J. Ch. 687; 103 L. T. 90; 26 T. L. R. 584—Joyce, J.

**ULTRA VIRES.**

*See* COMPANIES; LOCAL GOVERNMENT; PUBLIC AUTHORITIES; RAILWAYS.

**UMPIRES.**

*See* ARBITRATION.

**UNDUE INFLUENCE.**

*See* CONTRACT; EQUITY; HUSBAND AND WIFE; WILLS.

**UNLAWFUL ASSEMBLIES.**

*See* CRIMINAL LAW AND PROCEDURE.

**USURY.**

*See* MONEY AND MONEY-LENDING.

**VACCINATION.**

*See* PUBLIC HEALTH.

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*See* CRIMINAL LAW; POOR LAW.

# **VALUERS AND APPRAISERS.**

[No paragraphs in this vol. of the Digest.]

# **VENDOR AND PURCHASER.**

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# **VETERINARY SURGEONS.**

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*See* DEPENDENCIES AND COLONIES.

# **VOIDABLE ASSIGNMENTS, CONVEYANCES, AND SETTLEMENTS.**

*See* BANKRUPTCY.

# **VOLUNTARY ASSOCIATIONS.**

*See* CHARITIES; CLUBS.

# **VOLUNTEERS.**

*See* ROYAL FORCES.

# **WAGES.**

*See* MASTER AND SERVANT.

# **WAREHOUSES AND WAREHOUSING.**

*See* BAILMENT, No. 1; CARRIERS, No. 2.

# **WARRANTIES.**

*See* AUCTIONS; CARRIERS, No. 1; FOOD AND DRUGS; SALE OF GOODS.

# **WASTE.**

*See* REAL PROPERTY; SETTLEMENTS; TRUSTS.

# **WATERMAN.**

*See* METROPOLIS; WATERS AND WATERCOURSES.

# **WATERS AND WATERCOURSES.**

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*See also* CROWN PRACTICE; FISHERIES; HIGHWAYS, Nos. 2, 7; SEWERS AND DRAINS; SHIPPING, XV.

## **I. IN GENERAL.**

1. "Watercourse" — *Reservation in Lease — Natural Stream Conveyed partly through Culvert — Ownership of Culvert — Liability to keep in Repair.*—A lease of lands reserved to the lessor, for his exclusive use and benefit, *inter alia*, "rivers and rivulets, lakes, pools, water, and water-courses, and roads, with all necessary power and dominion over the same, with power to the lessor to divert, embank, and apply the said rivers, . . . water, and water-courses, as the lessor should see convenient or expedient to direct and appoint." Four natural streams converged at a point near the middle of the demised lands, and were conveyed thence by an artificial channel or culvert. There was no covenant in the lease imposing the obligation to keep this culvert in repair upon either lessor or lessee, but there were covenants by the lessee at the end of the term to deliver up the premises, and, *inter alia*, "all water-courses" in good repair and condition.

**HELD**—that the culvert was reserved to, and was the property of, the lessor, who was therefore as regards the lessee, who occupied the position of an adjoining owner, bound to main-



### I. In General—Continued.

tain the culvert in such a state of repair as would prevent damage to the lessee by flooding.

Decision of Div. Ct. reversed.

ANDERSON v. CLELAND, [1910] 2 I. R. 334—  
[C.A., Ireland.

### II. RIVERS.

See also FISHERIES. No. 6.

#### (a) Ownership of Soil.

[No paragraphs in this vol. of the Digest.]

#### (b) Pollution.

##### (i.) Manufacturing Refuse.

[No paragraphs in this vol. of the Digest.]

##### (ii.) Sewage.

See also No. 7, *infra*.

2. *Local Authority—Deteriorating the Purity of the Water—Injunction—Works Preventing Pollution—Public Health Act, 1875* (38 & 39 Vict. c. 55), s. 17.]—An injunction having been granted by Kekewich, J. ([1908] 2 Ch. 551; 77 L. J. Ch. 836; 98 L. T. 310; 72 J. P. 20; 24 T. L. R. 126), restraining the defendants from conveying sewage or filthy water into a river until the sewage or water was freed from all noxious matter such as would deteriorate the purity of the water in the river, the Court of Appeal discharged the injunction on it being shown that the state of things existing at the date of the judgment had been changed by the permanent works of the defendants, and that there was no longer any breach of sect. 17 of the Public Health Act, 1875, the defendants undertaking to use their best endeavours to prevent any recurrence of such breach, and paying the costs of the appeal.

ATTORNEY-GENERAL v. BIRMINGHAM, TAME [AND REA DRAINAGE BOARD, [1910] 1 Ch. 48; 79 L. J. Ch. 137; 101 L. T. 796; 74 J. P. 57; 26 T. L. R. 93; 54 Sol. Jo. 198; 8 L. G. R. 110—C. A.

3. *Local Authority—Liability—"Causing or Suffering"—Lea Conservancy Acts, 1868* (31 & 32 Vict. c. cliv.), s. 92; and 1900 (63 & 64 Vict. c. cxvii.), s. 28.]—Where a person has acquired the right to send sewage into the sewers of a local authority, and that sewage passes into a river, the local authority cannot be convicted of causing or suffering the sewage to pass into the river.

R. v. *Staines Local Board* ((1889) 60 L. T. 261) and *Thames Conservators v. Gravesend Corporation* (II. (e), *infra*) followed.

*Kirkheaton District Local Board v. Ainley* ([1892] 2 Q. B. 274) distinguished.

WALTHAM HOLY CROSS URBAN DISTRICT [COUNCIL v. LEA CONSERVANCY BOARD, 103 L. T. 192; 74 J. P. 253; 26 T. L. R. 483; 8 L. G. R. 579—Div. Ct.

4. "*Stream*"—*Mainly Used as Sewer—Rivers Pollution Prevention Act, 1876* (39 & 40 Vict. c. 75), ss. 3, 4.]—The Rivers Pollution Prevention Act, 1876, makes it an offence under sect. 3 to

cause or permit any solid or liquid sewage matter, and under sect. 4 to cause or permit any poisonous, noxious, or polluting liquid proceeding from any factory or manufacturing process, to fall, flow, or be carried into any stream.

HELD—that a watercourse which had been covered over, channelled, and bottomed, and was virtually mainly used as a drain or sewer, was a "stream" within the meaning of the Act.

Decision of Ct. of Sess. (44 Sc. L. R. 915) affirmed.

PROVOST AND MAGISTRATES OF AIRDRIE v. [COUNTY COUNCIL OF LANARK; PROVOST AND MAGISTRATES OF COATERIDGE v. SAME, [1910] W. N. 92; 79 L. J. P. C. 82; 102 L. T. 437; 47 Sc. L. R. 508—H. L. (Sc.).

##### (iii.) Procedure.

[No paragraphs in this vol. of the Digest.]

#### (c) Repairing Banks, etc.

[No paragraphs in this vol. of the Digest.]

#### (d) Rights of Riparian Owners.

5. *Impounding of Water from Spring—Flow Artificially Increased—Burden of Proof.*]—Where an upper riparian owner alleges that he has increased by artificial means the flow of water from a spring, the water of which ought *prima facie* to come down to a lower riparian owner, the onus of proving the fact and amount of such increase rests on the upper riparian owner, and the lower riparian owner ought not as a condition of enforcing his rights as such to be required to prove what was the extent of the flow before the artificial means were applied.

BOROUGH OF PORTSMOUTH WATERWORKS CO. [v. LONDON, BRIGHTON, AND SOUTH COAST Ry. Co., 74 J. P. 61; 26 T. L. R. 173—Parker, J.

6. *Pollution of Water by Sewage—Nuisance—Trespass—No Actual Damage—Injunction.*]—The owner of land upon the banks of a river can maintain a suit to restrain the pollution of the water of the river without showing that the pollution has caused him actual damage.

ISGOED-JONES v. LLANRWST URBAN DISTRICT [COUNCIL, 27 T. L. R. 133; 55 Sol. Jo. 125—Parker, J.

#### (e) River Thames.

7. *Sewer Discharging into Thames—"Cause or suffer to flow or pass"—Local Sanitary Authority's own Sewage—Liability—Thames Conservancy Act, 1894* (57 & 58 Vict. c. clxxxvii.), s. 94.]—By sect. 94 of the Thames Conservancy Act, 1894, "whenever any sewage or matter . . . is caused or suffered to flow or pass into the Thames or into any tributary, then and in every such case, even though such sewage or matter . . . had been lawfully so caused or suffered to flow or pass before the passing of this Act, the conservators" can give notice to discontinue such flow or passage, and if it is not discontinued a penalty is provided by the section.

A certain sewer vested in the respondents passed sewage into the Thames, and, although

## II. Rivers—Continued.

notice was served on the respondents, such passage of sewage was not discontinued.

**HELD**—that the respondents were within sect. 94 in respect of sewage from their own buildings, but not in respect of sewage coming from private premises, which found its way into the Thames through such sewer.

*R. v. Staines Local Board* ((1889) 60 L. T. 261) followed.

**THAMES CONSERVATORS v. GRAVESEND CORPORATION**, [1910] 1 K. B. 442; 79 L. J. K. B. 331; 100 L. T. 964; 73 J. P. 381; 7 L. G. R. 868—Div. Ct.

## III. SEASHORE.

### (a) In General.

[No paragraphs in this vol. of the Digest.]

### (b) Rights over Foreshore.

See **LOCAL GOVERNMENT**, No. 18.

## WATERWORKS.

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See also **METROPOLIS; RAILWAYS AND CANALS; WATERS AND WATERCOURSES.**

### I. IN GENERAL.

1. *Ultra Vires—Special Act—Purchase of Land—Obtaining New Water Supply—Sinking a Well*—4 Edw. 7, c. cc.—*Waterworks Clauses Act*, 1847 (10 & 11 Vict. c. 17), s. 12.]—In 1904 a water company obtained a further Act. The Act recited that it was expedient that the company should be empowered to construct additional waterworks. It recited the deposit of plans, incorporated (by sect. 3) the *Waterworks Clauses Act*, 1847, in general terms (defined (by sect. 4) the waterworks to be the works authorised by the company's earlier Acts and the present Act; and then proceeded (by sect. 5) to empower the company to acquire additional lands not exceeding a certain acreage anywhere within their limits of supply, and (by sect. 6) to construct a further reservoir in a different part of the company's area. Section 10 provided that the company might by agreement acquire and hold for the purposes of the water undertaking additional lands within the limits of supply not exceeding fifteen acres, and might on such lands execute for the purposes of, or in connection with, the waterworks, any of the works

and exercise any of the powers mentioned in or conferred by sect. 12 of the *Waterworks Clauses Act*, 1847. In purported exercise of the powers conferred on them by that section the water company acquired a piece of land six miles away from their reservoir, but within the limits of supply, and commenced to sink a well there for the purpose of obtaining a new water supply to the reservoir.

**HELD**—that the Act had conferred upon the company the right to execute the works and exercise the powers mentioned in or conferred by sect. 12 of the *Waterworks Clauses Act*, 1847, upon lands within the limits of supply, including the sinking of wells at any place at which a well was proper and necessary in connection with the reservoir and waterworks undertaking authorised by the Act, and that, therefore, that which the company were doing was not *ultra vires*.

Decision of C. A. (101 L. T. 651; 74 J. P. 1; 8 L. G. R. 15) affirmed.

**ATTORNEY-GENERAL v. BARNET DISTRICT GAS [AND WATER CO.]**, 102 L. T. 546; 74 J. P. 193; 54 Sol. Jo. 457; 8 L. G. R. 499—H. L.

## II. CHARGES FOR WATER.

[No paragraphs in this vol. of the Digest.]

## III. COMPENSATION WATER.

[No paragraphs in this vol. of the Digest.]

## IV. DIVIDENDS.

[No paragraphs in this vol. of the Digest.]

## V. SUPPLY OF WATER.

2. *Domestic Purposes—Affixing Pipe Without Consent—Temporary Purpose—Waterworks Clauses Act*, 1863 (26 & 27 Vict. c. 93), ss. 18, 19.]—A dairyman using water supplied by a water company for washing a milk float or cart used by him in his business uses the water for "other than domestic purposes" within sect. 18 of the *Waterworks Clauses Act*, 1863.

Using the water for washing a yard used for a trade and made dirty by such trade is using the water for a trade purpose.

The fixing of a temporary hose pipe to a service or communication pipe without the consent of the water company is an offence under sect. 19 of the *Waterworks Clauses Act*, 1863, and is in the same position as the making of a permanent fixing; and it makes no difference that the water is used for a domestic purpose.

**CAMBRIDGE UNIVERSITY AND TOWN WATERWORKS CO. v. HANCOCK**, 103 L. T. 562; 74 J. P. 477; 8 L. G. R. 1018—Div. Ct.

3. *Water Company—Consumer—Service Pipe—Right to Break Up Pavement of Street—Waterworks Clauses Act*, 1847 (10 & 11 Vict. c. 17), ss. 48, 49, 52.]—A., the owner of a house and land within the borough of the defendant corporation, was supplied with water for his premises through a private service pipe connected with the mains of a water company serving the district. This service pipe was laid for a considerable distance along a road vested in the defendants as the highway authority, but

V. Supply of Water—Continued.

the soil of which belonged to A. He entered into an arrangement with the plaintiff, a neighbouring owner, to allow the plaintiff to obtain a supply from the same company by tapping, with their consent, his service pipe. For the purpose of making the necessary connection the plaintiff commenced to break up the pavement of the road between his property and A.'s service pipe. The defendants by their servants obstructed the plaintiff's workmen, and the plaintiff brought an action and moved for an injunction to restrain such interference. The defendants contended that the plaintiff's right to break up the road was limited by sect. 52 of the Waterworks Clauses Act, 1847, to so much of it as lay "between the pipe of the undertakers and his house, building, or premises"; and that A.'s service pipe was not a "pipe of the undertakers."

HELD—that the indirect connection by means of A.'s pipe between the plaintiff's premises and the company's main was sufficient to bring the case within sect. 52, and that the plaintiff was entitled to break up the roadway.

PEARSON v. TENTERDEN CORPORATION, 74 J. P. [405—Joyce, J.]

4. *Cost of Repair of Communication Pipe—Threat to Cut off Supply—Duress—Right to Recover Cost of Repair—Ownership of Pipe—Onus of Proof—Waterworks Clauses Act, 1847 (10 Vict. c. 17), ss. 28, 44, 48-52.*—The plaintiff, having received a notice from the defendants, the local water company, threatening to cut off his water supply if he did not within forty-eight hours repair a leak in the communication pipe by which his house was supplied, had the pipe repaired and subsequently sued the defendants for the sum expended on its repair as money paid under duress. There was no evidence to show to whom the communication pipe belonged, or by whom and under what statutory provisions, if any, it had been laid down.

HELD—that the plaintiff having failed to prove that the pipe was the property of the defendants or that the sum expended was really payable by them, could not recover that sum as money paid under duress.

PARNELL v. PORTSMOUTH WATERWORKS, [8 L. G. R. 1029—Div. Ct.]

WAYS.

See EASEMENTS; HIGHWAYS.

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See also FOOD AND DRUGS.

I. INSPECTORS.	[No paragraphs in this vol. of the Digest.]
II. SALE OF COAL.	[No paragraphs in this vol. of the Digest.]
III. WEIGHING AND WEIGHING MACHINES.	[No paragraphs in this vol. of the Digest.]
IV. MEASURES.	
1. <i>Unstamped Measure—Milk Can—Used as Measure—Weights and Measures Act, 1878 (41 &amp; 42 Vict. c. 49), s. 29.</i> —The respondent was charged with using for trade an unstamped measure, and the facts proved were as follows: The respondent was a milk carrier, and in the course of delivering milk he took a can and placed it to the tap of a churn, from which the milk was drawn directly into it. He then left the can with the milk in it on a doorstep, it having apparently been ordered by a purchaser. An inspector then asked the respondent what he had delivered, and the respondent replied: "A pint of milk." The can was not stamped as a measure, but was of the correct capacity, viz., one pint, when the lid was not closed, and the respondent gauged the quantity of milk by filling the can as nearly as possible to the brim.	

HELD—that the respondent had committed the offence charged.

ROBINSON v. GOLDING, 103 L. T. 248; 74 J. P. [335; 8 L. G. R. 828—Div. Ct.]

V. MISCELLANEOUS.	[No paragraphs in this vol. of the Digest.]
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See MASTER AND SERVANT; SHIPPING AND NAVIGATION.

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See also CHARITIES; DEATH DUTIES; DESCENT AND DISTRIBUTION; EXECUTORS; GIFTS, No. 2; PERPETUITIES; POWERS; REAL PROPERTY, No. 1; SETTLEMENTS; TRUSTS.

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### III. INCORPORATION OF DOCUMENTS.

1. *List of Names and Amounts—No Words of Gift—Admission to Probate—Testamentary Document—Animus testandi—Construction.*—C. B. made his will, and afterwards signed a document containing simply a list of names and a sum of money opposite each, the signature being attested by two witnesses. The document was admitted to probate as a codicil to the will.

HELD—that, having been admitted to probate, the Court must treat the codicil as a testamentary document, and that, in the absence of evidence to the contrary, it was to be construed as a gift to each person of the amount standing opposite to his name.

IN RE BARRANCE, BARRANCE v. ELLIS, [1910]  
[2 Ch. 419; 79 L. J. Ch. 544; 103 L. T. 104;  
54 Sol. Jo. 651—Parker, J.]

2. *List of Names and Amounts—Admission to Probate—Void for Uncertainty.*—J. C., having some years previously made a will, on the day of his death dictated a document which consisted of a list of names of certain persons with sums of money written after each, signed by J. C., the signature being attested by two witnesses. This document was admitted to probate as a codicil to J. C.'s will.

HELD—that the codicil was void for uncertainty.

IN RE CAMPSILL, READING v. HINDE, 128  
[L. T. Jo. 548—Eve, J.]

### IV. REVOCATION.

#### (a) Destruction.

3. *Will Torn up—Afterwards Pieced Together—No Intention to Revoke.*—A will which had been in the possession of the testatrix, who referred to it two months before her death, was after her death found torn up and pieced together again.

HELD (all parties interested consenting)—that on the facts there was no presumption of revocation and that the will might be pronounced for.

IN THE ESTATE OF MACKENZIE, [1909] P. 305;  
[79 L. J. P. 4; 26 T. L. R. 39—Deane, J.]

#### (b) Generally.

[No paragraphs in this vol. of the Digest.]

#### (c) Revocation of Gift.

See also GIFTS, No. 2.

4. *Substitution of Executor by Codicil—Residuary Gift to Former Executor.*—A testator bequeathed to B., his executor, if he should prove the will, and in addition to any other benefit to which he might be entitled under the will, the sum of £1,000. And the testator also gave one-third of the residuary proceeds of his estate to B. By a codicil to his will, the testator appointed F. to be an executor of his will in the place of B., and gave to him a legacy of £200 for acting as such executor. And the

testator declared that his will should be construed and take effect as if the name of F. were inserted in his will "throughout," instead of the name of B.

HELD—that there was no revocation of the residuary gift to B.

Decision of Joyce, J. ([1910] 1 Ch. 681; 79 L. J. Ch. 110; 101 L. T. 780) affirmed.

IN RE FREEMAN, HOPE v. FREEMAN, [1910]  
[1 Ch. 681; 79 L. J. Ch. 678; 102 L. T. 516;  
54 Sol. Jo. 443—C. A.]

5. *Construction—Charge on Lands Devisee—Substituted Devisee—New or Additional Gift—Contribution pro rata.*—By will, a testator devised the lands of Whiteacre (including the lands of L.) to his younger son T., charged with another sum of £1,000 in favour of testator's daughter, with a similar gift over of these lands in favour of the elder son G. in the event of the death of the younger son T. without issue, and testator appointed his two sons G. and T. residuary legatees. By codicil testator provided as follows: I leave and bequeath the lands of L., which are left to my son T. in my will, to my son G., and also leave him my residuary legatee.

HELD—that the effect of the codicil was merely a substitution of the elder son G. for the younger son T. as devisee of the lands of L., and that he took the lands of L. subject, in conjunction with the rest of the lands of Whiteacre originally devised to T. by the will, to the charge of £1,000.

LUCAS v. LUCAS, [1910] 1 I. R. 353—Barton, J.,  
Ireland.

### V. ALTERATIONS AND ERASURES.

See EXECUTORS, No. 14.

### VI. MISTAKE AND AMBIGUITY.

See also VII., *infra*.

#### (a) Ambiguity.

[No paragraphs in this vol. of the Digest.]

#### (b) Clerical Error.

[No paragraphs in this vol. of the Digest.]

#### (c) Evidence of Intention.

See No. 53, *infra*.

#### (d) Misdescription.

[No paragraphs in this vol. of the Digest.]

#### (e) Mistake of Fact.

6. *Property of Testator Declared in the Will to Belong to Others—Residuary Gift.*—E. L. brought a moiety of the residuary estate of S. B., to which she was entitled, into the trusts of her marriage settlement. By her will she exercised a power given to her, and appointed this fund, with all her other property, to her husband G. L. absolutely. G. L. in his will mistakenly recited that a moiety of the fund representing this moiety was payable at his death to the executors of J. B. P.

HELD—that G. L. had simply specified a deduction from his estate which was unnecessary,

## VI. Mistake and Ambiguity—Continued.

and that all the estate, after payment of debts and legacies, was distributable amongst those entitled to residue.

IN RE LEE. GIBBON v. PEELE, 103 L. T. 103—  
[Parker, J.]

## VII. CONSTRUCTION AND INTERPRETATION OF TERMS.

See also No. 1, *supra*; Nos. 27, 28, 29, 30, *infra*; COPYRIGHT, No. 1; DEATH DUTIES, Nos. 2, 5, 7; REAL PROPERTY, No. 4.

7. *Construction—Gift of Income until Marriage—Gift over on Marriage—Death of Legatee Unmarried—Absolute or Life Interest.*—A direction to pay income to a legatee until her marriage followed by a gift over on her marriage, does not confer an absolute interest on the legatee in the event of her dying without ever having been married. The gift over takes effect either on death or marriage.

Rishton v. Cobb (1839) 5 My. & Cr. 145) distinguished.

Decision of Joyce, J. (101 L. T. 669) reversed

IN RE MASON, MASON v. MASON, [1910] 1 Ch. 695; 79 L. J. Ch. 605; 102 L. T. 514; 54 Sol. Jo. 425.—C. A.

8. *Construction—Will Speaking as at Death—Contrary Intention—Wills Act, 1837* (1 Vict. c. 26), s. 24.—A testator by his will, after various bequests, devised and bequeathed all his real and personal property to trustees upon trust as to all his stock and shares in the L. & S. W. Railway Company and in the C. W. Company, and all his ground rents, to pay the income thereof to G. during her life. And the testator declared that, if the said stock and shares and ground rents or any of them should have been disposed of at the time of his decease, his trustees should invest such a sum of money as would, together with any of the said stock and shares and ground rents remaining undisposed of, produce an income of £300 a year, and hold such investments upon the same trusts as those declared in respect of the said stock and shares and ground rents. Subsequently to the date of his will the testator had acquired further stock in the L. & S. W. Railway Company and other ground rents to a considerable amount.

HELD—that a “contrary intention” appeared from the terms of the will sufficient to take it out of sect. 24 of the Wills Act, and that therefore the gift of stock and ground rents included only those to which the testator was entitled at the date of his will, subject to the provision as to making up the income to £300 a year.

Decision of Joyce, J. ([1910] W. N. 36) reversed.

IN RE ALEXANDER, BATHURST v. GREENWOOD, [1910] W. N. 94; 45 L. J. N. C. 269; 128 L. T. Jo. 568.—C. A.

9. *“For and Equally between” Statutory Next of Kin—No Reference to Statutory Mode of Distribution—Equally per Capita.*—Where the

Statutes of Distribution are referred to in a will merely for the purpose of determining a class, and there is no reference to the statutory mode of distribution, a gift “for and equally between” the statutory next of kin must be distributed equally *per capita*, and not equally *per stirpes*.

IN RE RICHARDS, DAVIES v. EDWARDS, [1910] 2 Ch. 74; 79 L. J. Ch. 500; 103 L. T. 130—  
Eady, J.

10. *Construction—Gift of House and Household Effects—Free of Duty—Pecuniary Legacy not Given Free of Duty—Liability to Duty.*—A testator gave his house and household effects to his housekeeper free of duty, and he also gave to her an annuity, to be paid to her monthly so long as she should live.

HELD—on the true construction of the will that the gift of the annuity was not subject to the conditions attached to the prior gift, and therefore the annuity was not given free of duty.

Johnstone v. Earl of Harrowby ((1859) 1 De G. F. & J. 183) distinguished.

IN RE HOWE, WILKINSON v. FERNIEHOUGH, [1910] W. N. 190; 103 L. T. 185; 54 Sol. Jo. 704—Eve, J.

11. *Construction—Gift to “Each of my Cousins and their Sons and Daughters who shall be Living at my Decease”—Exclusion of Children of First Cousins Dead at Date of the Will.*—A testator bequeathed all his property to trustees to be converted and held “upon trust to divide the same among each of my cousins and their sons and daughters who shall be living at my decease, such division to be calculated in such a manner that each of my first cousins shall receive five times as much as each of their sons and daughters.”

HELD—that, on the true construction of the will, sons and daughters of first cousins who were dead at the date of the will were not entitled to take.

Parker v. Tootal ((1865) 11 H. L. Cas. 143) applied.

IN RE HILLMAN, ADE v. HILLMAN, 103 L. T. 183—Parker, J.

12. *Construction—Reddendo singula singulis—Exclusion of Heir-at-Law by Implication.*—Where after gifts of annuities to certain persons, including the heiress-at-law, a will contained the following clause—“After the death of these parties named in my will, and if my wife has no children to me, I give and bequeath to the Church Representative Body all my property in Clones . . . for the benefit of [three named parishes] . . . They to pay all my debts. . .”

HELD, the testator having died without issue, that the words “after the death of these parties and if my wife has no children to me” were to be construed distributively, and that the said three parishes took an immediate estate in the property from and after the testator’s death subject to the annuities.

IN RE MOTHERWELL, KEANE v. MOTHERWELL, [1910] 1 I. R. 249; 44 I. L. T. 148—Barton, J., Ireland.

## VII. Construction and Interpretation of Terms —Continued.

**13. Construction—Gift to Wife with Power to Deprive Child—Legatee taking Absolutely or as Trustee.]**—By his will a testator provided as follows:—"I will, devise, and make over to my wife all real and personal property which I may hold in A. or elsewhere. I do not wish to deprive any of the five children we have of an equal share and share alike, but that their mother should have power at any time on their disobeying her, whom I leave as guardian over them, to deprive them of the whole or any portion of their share." He appointed his wife and another executors. He left a widow and five minor children surviving him.

HELD—that the testator gave the whole of his property to his wife for life, and after her death to the children, with power to his wife at any time during her life to deprive any child of the share, to which he or she would otherwise be entitled at their mother's death, for disobedience.

SHIELDS *v.* SHIELDS, [1910] 1 I. R. 116—  
[Barton, J., Ireland.]

**14. Construction—Gift to Children—Power of Appointment not exercised by Mother—Joint Tenancy or Tenancy in Common.]**—A testator gave real and chattel real property to M., and desired that what he had left to her "she shall not have power to alienate or dispose of or incumber it in any manner whatsoever, but that it shall regularly descend to her children in such proportion or proportions as she may think right or proper." M. died without exercising the power, leaving four children.

HELD—that the children took as joint tenants.  
WELLAND *v.* TOWNSEND, [1910] 1 I. R. 177—  
[Wylie, J., Ireland.]

**15. Construction—Clear Gift—Subsequent Ambiguous Words.]**—The testator, a small farmer, having by will left his farm and its equipment in clear and unambiguous language to his widow, continued his will as follows:—"This—should my son John return from America sooner or later to give my wife, his mother, the sum of £60, also one half acre of land and one cow's grass, that's if he be the owner or thinks well of it, and if not, she is at liberty to sell to anyone she likes after tendering to the said John":—

HELD—that these words did not cut down or affect the previous clear gift to the widow.

CONMY *v.* CAWLEY, [1910] 2 I. R. 465—C. A.,  
[Ireland.]

**16. Construction—Devise to Wife "for her Use and her Children"—Equitable Joint Tenancy—Tenancy in Common.]**—A testator devised fee-simple lands to his wife "for her use and her children," and gave her power to sell:—

HELD—that the widow was trustee for herself and children as equitable joint tenants.

HELD ALSO—that on the sale of the land, and after the death of the widow, the children took the proceeds equally as tenants in common.

QUINN *v.* GRUGAN, 44 I. L. T. 109—Barton, J.,  
[Ireland]

**17. Legacy to Hospital to "Found" Bed.]**—Where a sum is bequeathed to a hospital to enable a bed, to bear a specified name, to be provided, the particular word used by the testator—whether "found," "establish," "endow," or the like—is immaterial. If the intention to establish the bed in perpetuity can be gathered from the will, the amount bequeathed must be invested and a bed maintained out of the income so far as it will go. It is not, however, necessary that there should be a new bed, if the specified name can be given to an existing bed in the hospital.

ATTORNEY-GENERAL *v.* BELGRAVE HOSPITAL,  
[1910] 1 Ch. 73; 79 L. J. Ch. 75; 101 L. T. 628; 26 T. L. R. 40; 54 Sol. Jo. 31—Eady, J.

**18. "Plate and Plated Articles"—Articles Mounted with Plate.]**—The testator bequeathed to the plaintiff his "plate and plated articles."

HELD—that silver-mounted mugs known as "black jacks" did not pass under the bequest.

IN RE LEWIS, PROTHERO *v.* LEWIS, [1910]  
[W. N. 6; 26 T. L. R. 145—Joyce, J.]

**19. "My Wife"—Widower Intending to Remarry.]**

HELD—on the facts of the case, that a bequest by a widower to "my wife" was intended for the testator's housekeeper, whom he had spoken of as his wife but had been prevented from marrying by his last illness, and took effect in her favour accordingly.

IN RE BROWN, GOLDING *v.* BRADY, 26 T. L. R.  
[257; 54 Sol. Jo. 251—Eady, J.]

**20. "All Moneys Deposited or Invested in Banks or Institutions or Owed to Me"—Consols.]**

—A testatrix directed that the residue of her effects should be sold and that the proceeds "together with all moneys deposited in or invested in any banks or institutions or owing or due to me at the time of my decease except as hereinbefore provided for be paid to the Governors of St. Thomas's Hospital."

HELD—on the construction of the will, that a sum in Consols held by the testatrix fell within the bequest to the hospital.

IN RE HARDING; DREW *v.* ST. THOMAS'S  
[HOSPITAL, 27 T. L. R. 102; 55 Sol. Jo. 93—  
Eve, J.]

**21. "Purchase Money"—Bonuses Given to the Vendor under the Irish Land Acts.]**—The percentage or "bonus" given by the Land Commission under the Irish Land Acts to a vendor selling under those Acts is not part of the purchase money of the land sold, and the expression "purchase money" used in a will or codicil made subsequently to those Acts does not of itself include such bonus.

IN RE OLIVER; RAMSDEN *v.* RAMSDEN, 103  
[L. T. 422; 55 Sol. Jo. 12—Warrington, J.]

**22. "House and Farm"—Two Farms—Extrinsic Evidence—Oral Instructions for a Will.]**—A testator owned two small farms near each other and worked together. He lived in a house on one of them. By his will he devised his "house and farm" to X. There was no other disposition of his land.

## VII. Construction and Interpretation of Terms —Continued.

HELD—that “farm” included each of the two small farms or holdings which testator had farmed together.

HELD ALSO—that evidence could not be given of an oral statement made by deceased to the person who drew the will, showing that by “farm” he meant both holdings.

M'GONIGLE v. M'GONIGLE, [1910] 1 Ir. 297;  
[44 I. L. T. 140—Barton, J., Ireland.

Affirmed on appeal, [1910] 1 I. R. 300—C. A. Ireland.

23. “Residuary Legatee”—*Real Estate—Intention.*—*Prima facie* “residuary legatee” refers only to the legatee of personal estate; but the context may enable the Court to give a wider meaning to the words “residuary legatee,” and to hold that the words are wide enough to embrace real estate which, in the events which have happened, is undisposed of.

*Pitman v. Stevens* (1812) 15 East, 505, applied.

IN RE GREALLY, TRAVERS v. O'DONOGHUE, [1910] 1 I. R. 239—Meredith, M.R., Ireland.

## VIII. SECRET TRUST.

[No paragraphs in this vol. of the Digest.]

## IX. ELECTION.

24. *Power of Appointment—Appointment Void for Remoteness—Gift to Persons Entitled in Default of Appointment.*—Where an appointment is partially void as transgressing the rule against the limitation of land to an unborn child with remainder to the latter's unborn child and there is a gift to persons entitled in default of appointment, such persons are not put to their election.

*In re Oliver's Settlement* ([1905] 1 Ch. 191) approved; *In re Bradshaw* ([1902] 1 Ch. 436) overruled.

Decision of *Eve, J.* ([1909] 2 Ch. 450; 78 L. J. Ch. 657; 101 L. T. 153; 53 Sol. Jo. 698) affirmed.

IN RE NASH, COOK v. FREDERICK, [1910] 1 Ch. 1; 79 L. J. Ch. 1; 101 L. T. 837—C. A.

See S. C. under POWERS, No. 8.

## X. ADEMPTION.

25. *Specific Legacy of Shares—Change in Denomination of Shares—Sale by Curator Bonis.*—A. by his will, dated February 11th, 1902, bequeathed to his mother, and to three sisters, “100 £5 shares of the Empire Guarantee and Insurance Corporation, Limited.” By resolution of the company each of the £5 shares was in 1907 divided into five £1 shares. A's holding, which was at that time 500 £5 shares, became 2,500 £1 shares, for which he received a new certificate. A. became insane, and on August 18th, 1908, B. was appointed *curator bonis* to A., who at that date possessed 1,750 £1 shares. On November 19th, 1908, B. sold the said shares, not because the money was required for the payment of A.'s debts nor for his maintenance,

but because he considered it imprudent to hold them. A. died on November 20th, 1908.

HELD—that the legacies were not adeemed either by the sale of the shares by the *curator bonis* or by the alteration in the form thereof.

MACFARLANE'S TRUSTEES v. MACFARLANE, [1910] S. C. 325; 47 Sc. L. R. 266—Ct. of Sess.

## XI. SATISFACTION.

26. *Donatio mortis causa—Subsequent Will—Legacy of same Amount.*—There is no presumption that a *donatio mortis causa* is satisfied by the bequest of the same amount in a will subsequently executed.

*Jones v. Selby* ((1710) Prec. Chan. 300) distinguished.

HUDSON v. SPENCER, [1910] 2 Ch. 285; 79 [L. J. Ch. 506; 103 L. T. 276; 54 Sol. Jo. 601 —Warrington, J.

## XII. HOTCHPOT.

See POWERS, No. 10.

## XIII. SUBSTITUTIONAL GIFT.

[No paragraphs in this vol. of the Digest.]

## XIV. CLASS GIFTS.

27. *Construction—Real Estate—Life Estate—Remainder—Period of Ascertainment of Class.*—A testatrix, who died in 1893, having under her marriage settlement a general power of appointment over real estate vested in trustees, specifically appointed it to the trustees of her will in trust for her husband, who died in 1899, for life, with remainder upon trust for E. L. M., the wife of J. J. M., during her life or widowhood, and after her decease or remarriage upon trust for all and every the children of J. J. M. on attaining twenty-one, or, in the case of daughters, previously marrying.

At the death of E. L. M. in 1909 there were four children of her marriage with J. J. M. who had all attained twenty-one. J. J. M. was still living.

HELD—that these four children were alone entitled to the proceeds of the sale of the real estate which was the subject of the power of appointment to the exclusion of after-born children of J. J. M. of any future marriage.

The rule stated by *Jessel, M.R.*, in *In re Emmet's Estate*; *Emmet v. Emmet* (42 L. T. R. 4; 13 Ch. D. 484, at p. 490) applied; *Blackman v. Fysh* ([1892] 3 Ch. 209) distinguished.

IN RE CANNEX'S TRUSTS, MAYERS v. STROVER, [1910] W. N. 45; 101 L. T. 905; 54 Sol. Jo. 214—*Eve, J.*

28. *Legacy to “Next of Kin”—Prior Life Estate—Time for Ascertainment of Class—Statute of Distributions.*—Where there is a gift to “next of kin,” or “nearest of blood,” or any similar expression, the time at which the class is to be ascertained is the death of the testator.

If a testator makes a gift to a tenant for life, and “after the death of the tenant for life to the persons who shall then be my relatives or my next of kin,” apart from reference to the Statute of Distributions, the class is to be ascertained at



## XIV. Class Gifts—Continued.

the death of the tenant for life in accordance with the express language of the testator.

When, however, a testator, referring to his statutory next of kin, uses expressions such as "the persons who shall then be entitled by virtue of the Statute of Distributions," the ordinary rule which would have ascertained the class at the time the testator points to is or may be rebutted, because of the necessity for any person, who claims under the gift, to prove his title by virtue of the Statute of Distributions.

*In re Nash, Prall v. Bevan* ((1894) 71 L. T. 5) applied.

IN RE WINN, BROOK *v.* WHITTON, [1910] 1 Ch. 278; 79 L. J. Ch. 165; 101 L. T. 737—Parker, J.

29. "*My then Next of Kin According to the Statutes*" of Distribution—*Time of Ascertaining Class—Artificial Class.*—A testator left all his property upon trust (*inter alia*) to pay an annuity to his brother and to accumulate income, with remainder after his brother's death "for such person or persons as shall upon the death of my said brother be my then next of kin according to the Statutes" of Distribution.

HELD—that the persons entitled in remainder were an artificial class composed of the person or persons who would have been the testator's next of kin according to the Statutes of Distribution if he had died immediately after the death of his brother.

*In re Sturge and Great Western Ry. Co.* ((1881) 19 Ch. D. 444) followed.

IN RE MCFEE, MCFEE *v.* TONER, [1910] W. N. 186; 79 L. J. Ch. 676; 103 L. T. 210—Joyce, J.

On appeal, the objection being taken that Joyce, J., was wrong in deciding the case according to English law, inasmuch as the testator, it was contended, was domiciled in Scotland, it was held that there must be an inquiry as to the domicile of the testator, and that the appeal must stand over until that question had been determined—130 L. T. Jo. 32; 45 L. J. N. C. 739—C. A.

## XV. LAPSE.

30. *Lapse of Specific Bequest of Picture—General Gift of Pictures Except Specific Bequest—General Gift of Residue*—"Not Otherwise Specifically and Effectually Disposed of."—A testator by his will bequeathed a particular picture by E. to R. F., and by the following clause bequeathed all his pictures, etc., "except and subject as mentioned in the last preceding clause" to trustees on certain trusts. In the next clause he disposed of all his real and personal estate "not otherwise specifically and effectually disposed of." R. F. predeceased the testator.

HELD—that the picture by E. fell within the residuary gift and not within the general gift of pictures.

IN RE SHIPLEY, MIDDLETON *v.* NEWCASTLE-UPON-TYNE CORPORATION, 130 L. T. Jo. 82—Eve, J.

## XVI. ABSOLUTE GIFT.

See also Nos. 7, 13, 15, *supra*.

31. *Will—Construction—Trusts by Reference to Marriage Settlement—Ultimate Trust for Testator—Default of Issue—Rule in Lassence v. Tierney.*—R. by his will made in 1854 devised and bequeathed his residuary estate to his trustees upon trust for all his children (except his eldest son) who should survive him and attain twenty-one as tenants in common. And he directed that the shares of married daughters should go to the trustees of their respective marriage settlements, and be held on the same trusts as were in such settlements declared concerning the moneys thereby settled by the testator upon such daughters, or such of them as should then be subsisting and capable of taking effect.

R. died in 1855, leaving C. (a married daughter) surviving. C. died in 1909 without having had issue. Under C.'s marriage settlement, the ultimate trust in default of issue was for R., his executors, administrators, and assigns.

HELD—that the share of C. of the residue devolved, upon her death without issue, upon her legal representatives.

Observations on the rule in *Lassence v. Tierney* ((1849) 1 Mac. & G. 551).

IN RE CURRIE'S SETTLEMENT; IN RE ROOPER, [ROOPER *v.* WILLIAMS, [1910] 1 Ch. 329; 79 L. J. Ch. 285; 101 L. T. 899; 54 Sol. Jo. 270—Joyce, J.

## XVII. CONDITIONS.

See also SETTLEMENTS, No. 11.

## (a) Condition Precedent or Subsequent.

[No paragraphs in this vol. of the Digest.]

## (b) Contingent Gift.

[No paragraphs in this vol. of the Digest.]

## (c) Forfeiture.

See also SETTLEMENTS, No. 17.

32. *Forfeiture Clause*—"Belong to or become vested in"—*Receiver by Way of Equitable Execution—Order Directing Payment in Satisfaction of Debt.*—A forfeiture clause in a will, to take effect when a life interest should "belong to or become vested in" any person other than the life tenant, does not take effect merely because a receiver of that interest is appointed with a direction to pay the income in or towards satisfaction of a judgment debt and costs.

Observations of Lindley, L.J., in *In re Potts, Ex parte Taylor* ([1893] 1 Q. B. at p. 661) applied.

*Semble*—that, if the creditor, being appointed receiver in person, had collected and retained money under the order, the forfeiture clause might have taken effect.

IN RE BEAUMONT, WOODS *v.* BEAUMONT, [1910] [W. N. 181; 79 L. J. Ch. 744; 103 L. T. 124—Joyce, J.

## XVII. Conditions—Continued.

## (d) Heirlooms.

See SETTLEMENTS, No. 8.

## (e) Name and Arms Clauses.

**33. Devise of Realty — Condition Requiring Devisee to Assume Testator's Surname and Arms—Gift Over on "Refusal or Neglect"—Infant.**—A testator directed that every person who should become entitled under his will to certain hereditaments should, within six calendar months thereafter, assume the testator's surname and arms, and in case such person should refuse or neglect to do so the limitation to such person should absolutely determine, and the hereditaments should immediately go to the person next in remainder under the limitations in the will.

**HELD**—that inasmuch as an infant has no power to exercise a discretion in reference to such a matter, an infant in whom the hereditaments had become vested could not, if he did not assume the testator's surname and arms, be said to "refuse or neglect" to do so, and consequently that he was not bound by the condition, and the gift over did not take effect.

*Partridge v. Partridge* ([1894] 1 Ch. 531) applied.

**IN RE EDWARDS, LLOYD v. BOYES**, [1910] 1 Ch. [541; 79 L. J. Ch. 281; 102 L. T. 308; 26 T. L. R. 308; 54 Sol. Jo. 325—Warrington, J.

## (f) Restraint of Marriage.

See No. 7, *supra*; No. 35, *infra*.

## (g) General.

**34. Living with Mother if Parents Separated—Omission of Duty.**—A testator bequeathed one-fourth of his estate in trust for his daughter for life and then for her children who should survive her and the testator, and attain twenty-one, but he declared that if at any time his daughter and her husband should be living separately from each other, only such of their children who, being under twenty-one, should permanently reside with or be under the sole control of his daughter should be entitled to any benefit under the will, and if no child should become entitled, the daughter's share was to be held in trust for certain other beneficiaries.

**HELD**—that the above-mentioned condition was invalid, and that, notwithstanding its non-performance, the daughter's children were entitled, on surviving their mother, to a share in the testator's estate.

*Mitchell v. Reynolds* ((1711) 1 P. Wms. 181, at p. 189) applied.

**IN RE MORGAN DOWSON v. DAVEY**, 26 T. L. R. [398—Warrington, J.

**35. Condition as to Marriage with Consent—Condition as to Failure of Issue—Marriage during Lifetime of Testator—Effect of Codicil Confirming Will—Intention of Testator.**—A testator by his will gave a life interest in certain property to his son, with a gift over "in case my son shall marry with the consent in writing of my

said wife and of my said trustees," to the son's children; there was a further gift over to an artificial class in case the son should marry without such consent, or marry with consent and have no child. After execution of the will, the son married with the testator's own consent, and during such marriage the testator made a codicil, unimportant for this issue, but confirming his will in all other respects. The son's wife died in 1878, the testator in 1887, and the son in 1909, the latter having never remarried and never having had any issue.

**HELD**—that the condition as to marriage with consent was discharged by the testator's own consent to the marriage in his lifetime, and that the further condition, as to a marriage with consent producing no issue, operated to give the property to the artificial class named in the will.

**HELD FURTHER**—that the confirmation of the will by the codicil did not have the effect of bringing the date of the former down to the date of the latter for every purpose, and could not make the conditions of the will apply to a future marriage of the son.

**IN RE PARK, BOTT v. CHESTER**, [1910] 2 Ch. [322; 79 L. J. Ch. 502; 102 L. T. 725; 54 Sol. Jo. 563—Parker, J.

**36. Gift of Leasehold House—Gift of Stocks and Shares—Covenants Attaching to House—Mortgage of House and Stocks by Beneficiary—Liability of Mortgagees for Breaches of Covenant—Assertion of Ownership by Mortgagees Affecting their Liability—Set-off against Gift of Stocks—Independence of Gifts.**—L. left his leasehold house to M. for life, she to be liable for the covenants in the lease. He also left her a life interest in certain stocks with power to appoint by will. M. mortgaged both interests to the R. Society, and made default in paying interest. The society obtained a foreclosure order, but forebore to take possession. The lessors of the house proceeded against the trustees for breach of the covenants in the lease. Upon the question of the liability of the R. Society as mortgagees:—

**HELD**—that the society, not having asserted their rights under the foreclosure order, were not liable; and that, the gifts of the house and the stocks being independent of each other, they might retain their interest in the latter without being liable under the covenants attaching to the former.

**IN RE LOOM, FULFORD v. REVERSIONARY INTEREST SOCIETY, LD.**, [1910] 2 Ch. 230; 79 L. J. Ch. 704; 102 L. T. 907; 54 Sol. Jo. 583—Parker, J.

## XVIII. VESTING.

See also XIV., *supra*; REAL PROPERTY, No. 4; SETTLEMENTS, No. 8.

**37. Construction—Mixed Gift of Realty and Personality to Children and their Children—Gift in Succession—Executory Bequest or Limitation Over on Death of Testator's Children—Rule in Wild's Case.**—J. by his will devised and bequeathed all his leasehold and real estate

### XVIII. Vesting—Continued.

to his wife for life, and after her decease he devised and bequeathed whatever might be left to his children in the following proportions: namely, two-fifths of the whole of his estate to his son M. J., and the other three-fifths to his daughters M. M. and E. E. in two equal shares, "and to the child or children of the three said children." And the testator provided that "in case of any of my children dying and leaving no legal issue, the share or shares of those dying to be given to the surviving child or children of such as will be dead. My daughters' and granddaughters' shares to be independent and free from all husbands." None of the three children married until after the testator's death, but one of them married and had a child born in the lifetime of the testator's widow, and another had children born since the widow's death.

HELD—that no child was at present entitled to his or her share absolutely, but that such share was subject upon the death of the child to an executory bequest or limitation over to his or her children.

Observations on the rule in *Wild's Case* ((1599) 6 Co. Rep. 16 b).

IN RE JONES, LEWIS v. LEWIS, [1910] 1 Ch. [167; 79 L. J. Ch. 34; 101 L. T. 549—Joyce, J.

### 38. Appointment of Share of Trust Fund—Contingent Interest—Right to Intermediate Income.]

—A. by his will gave the residue of his real and personal estate to trustees upon trust to pay the income thereof to his son B. during his life, and thereafter to apply the principal to the children of the said son, in such manner as he should by deed or will appoint, and in default of appointment to and among his children equally: By his will B. appointed a sum of £5,000, portion of the trust funds, to each of his younger sons, and to each of his daughters, to be paid on their attaining twenty-one, the remainder to be paid to his eldest son. B.'s eldest child, a daughter, having attained the age of twenty-one:—

HELD—that she was entitled to be paid the sum of £5,000 with the interest which accrued thereon from the date of her father's death until she came of age.

IN RE LAMBERT, LAMBERT v. LAMBERT, [1910] [1 I. R. 280; 44 I. L. T. 119, C. A., Ireland.

### XIX. DIVESTING.

[No paragraphs in this vol. of the Digest.]

### XX. PERPETUITIES AND REMOTENESS.

See PERPETUITIES, No. 1, II.; SETTLEMENTS, No. 16.

39. *Remoteness—Trust to Pay Off Mortgage out of Income—Trust for Sale—Mortgage Debt Payable by Instalments.*—A testator devised real estate upon trust out of the surplus rents to pay off the mortgages thereon, and then to sell and divide the proceeds among his children. The mortgages were repayable by instalments, which, if duly paid, would discharge the mortgages within a life in being and twenty-one years afterwards.

HELD—that as the trust for sale would not necessarily arise within the prescribed period, the devise was void for remoteness.

IN RE BEWICK, RYLE v. RYLE, [1911] 1 Ch. [116; [1910] W. N. 261; 103 L. T. 634; 55 Sol. Jo. 109—Eve, J.

40. *Settled Bequest—Remainder to Contingent Class of Unborn Persons upon Attaining Twenty-five Years—Advancement and Maintenance Clauses—Effect upon Vesting of the Interest—Codicil Referring to Remainderman Attaining Twenty-one Years—Effect of Codicil upon Legality of Gift.*—Where a testator gave a settled bequest in remainder to his unborn grandchildren upon their attaining the age of twenty-five years, the fact that he had given the trustees a power to apply the income of the whole or part of each share for maintenance, or up to one half of the expectant share of each grandchild for advancement, did not cause an earlier vesting of the interests so as to prevent the gift being void for remoteness.

And where, in a subsequent codicil, the testator gave a gift over of the bequest in the event of none of the grandchildren attaining twenty-one years, the wording of the codicil was held not to be inconsistent with the wording of the will to the extent of making it override the will, or to bring the gift within the period allowed by the rule against perpetuities.

IN RE RICKETTS, RICKETTS v. RICKETTS, 103 [L. T. 278—Parker, J.

### XXI. CREATION OF ESTATE TAIL.

See REAL PROPERTY, No. 4.

### XXII. DIRECTIONS TO TRUSTEES.

See also No. 31, *supra*; XXIII., *infra*; DEATH DUTIES, No. 7; EXECUTORS, No. 12; TRUSTS, No. 12.

#### (a) Investment Clause.

See TRUSTS, No. 8.

#### (b) Maintenance.

41. *Legacy to Infant—Vesting at Twenty-one—Advancement Clause.*—A testatrix bequeathed a share in £3,000, part of her residuary estate, to an infant, directing that it should vest on his attaining the age of twenty-one. The will empowered the trustees to apply this share for the advancement "or otherwise for the benefit" of the infant, but contained no express power of maintenance.

HELD, following *Pett v. Fellows* ((1733) 1 Swans. 561, n.), as explained in *Leslie v. Leslie* ((1835) LL. & G. t. Sugden, 1)—that the will contained sufficient evidence of the testatrix's intention to maintain to justify the trustees in applying the interest at 4 per cent. on the infant's share towards his maintenance.

IN RE CHURCHILL, HISCOCK v. LODDER, [1909] [2 Ch. 431; 79 L. J. Ch. 10; 101 L. T. 380; 53 Sol. Jo. 697—Warrington, J.

#### (c) Miscellaneous.

[No paragraphs in this vol. of the Digest.]

## XXII. Directions to Trustees—Continued.

## (d) Precatory Trusts.

**42. Intention—Charitable Trust—Scheme.]—**By her will the testatrix gave a legacy of £2,300 to R. By a codicil dated the same day as the will she declared as follows: "I wish R. to use £1,000, part of the legacy given to him by my above will, for the endowment in his own name of a cot [in a specified hospital] and to retain the balance of the said legacy for his own use and benefit." By a later codicil the testatrix declared: "I wish R., after endowing a cot as provided by the first codicil, to use the balance of the legacy given to him by my will for such charitable purposes as he shall in his absolute discretion think fit." After the testatrix's death R. renounced and disclaimed the legacy.

HELD—that the legacy did not fall into residue, but that a charitable trust was created by the will and codicils, and that there must be a scheme to carry it out.

IN RE BURLEY, ALEXANDER v. BURLEY, [1910]  
[1 Ch. 215; 79 L. J. Ch. 182; 101 L. T. 805;  
26 T. L. R. 127—Joyce, J.]

**43. Special Desire that Sums Bequeathed should be Specifically Left to Charities—Absolute Gift—Cutting Down by Uncertain Words.]—**A will, after bequests to W., and to A. and L., the testator's sisters, subject to a legacy to C., who was appointed with W. "co-executor and co-trustee for" A. and L., and after certain specific bequests, continued as follows: "I specially desire that the sums herewith bequeathed shall, with the exception of the £1,000 to C., be specifically left by the legatees to such charitable institutions of a distinct and undoubted Protestant nature as my sisters may select and in such proportion as they may determine."

HELD—that where the words employed are sufficient in themselves to give the donee the whole property in the subject-matter of the gift, the interest of the donee is not cut down to a trust or life estate by the mere expression of a desire; and that in the present case property was given to A. and L. absolutely, and could not be taken away by words which were of a doubtful or uncertain meaning.

IN RE CONOLLY, CONOLLY v. CONOLLY, [1909]  
[W. N. 259; 79 L. J. Ch. 148; 101 L. T. 783;  
26 T. L. R. 189—Joyce, J.]

## XXIII. CONVERSION.

## (a) Leaseholds.

[No paragraphs in this vol. of the Digest.]

## (b) Power of Postponement.

See No. 45, *infra*.

## (c) Tenant for Life and Remainderman.

**44. Devise to Trustees—Power of Sale—Exercise after Death of Remainderman Intestate.]—**Real estate subject to a power of sale is not converted until the power of sale is exercised. Such conversion has no retrospective effect, and does not divest an heir-at-law's reversionary interest in

the land at the time of conversion, but merely changes the interest from an interest in real estate to an interest in personal estate.

IN RE DYSON, CHALLINOR v. SYKES, [1910]  
[1 Ch. 750; 79 L. J. Ch. 433; 102 L. T. 425—  
Neville, J.]

**45. Direction to Convert Business—"Income"—Profits of Unconverted Business.]—**A testator directed his property to be converted, with power to postpone conversion except as to his business, and he directed the income arising from his estate until conversion to be applied as if the same were income arising from the proceeds of such conversion. It was found impracticable to dispose of the business.

HELD—that the profits of the business represented income arising from the testator's estate, and ought therefore to be paid to the tenant for life.

IN RE ELFORD, ELFORD v. ELFORD, [1910] 1 Ch.  
[814; 79 L. J. Ch. 385; 102 L. T. 488; 54  
Sol. Jo. 542—Eve, J.]

**46. Realty—Devise of Reversion of Term—Postponement of Sale—Application of Interim Income for Payment of Debts—Earlier Sale—Right of Recoupment.]—**A testatrix directed that the sale of her realty should be postponed until the expiration of a certain period, and that until sale the income should be applied towards the payment off of certain debts, and that after the sale the proceeds thereof should be divided between certain beneficiaries. In the events which happened, it became necessary to sell part of the property before the end of the period in order to pay off the debts.

HELD—that the persons entitled to the proceeds of sale were also entitled to be recouped out of the income of the unsold part of the property during the remainder of the period.

IN RE WEBSTER, DECEASED, THOMPSON v. THOMPSON, 102 L. T. 905; 54 Sol. Jo. 602—  
Parker, J.]

## XXIV. PAYMENT OF DEBTS AND LEGACIES.

See also No. 46, *supra*; DEATH DUTIES; EXECUTORS, IV.

## (a) Abatement.

See POWERS, No. 7.

## (b) Apportionment.

[No paragraphs in this vol. of the Digest.]

## (c) Charge on Real Estate.

[No paragraphs in this vol. of the Digest.]

## (d) Exoneration of Mortgaged Property.

[No paragraphs in this vol. of the Digest.]

## (e) Interest on Legacies.

**47. Contingent Legacies to Infants at Twenty-five and Thirty—Maintenance—Contingency Subsequent to Attaining Majority—Life Interest in Share of Residue—Another Fund Provided for Maintenance—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 43.]—**



#### XXIV. Payment of Debts and Legacies—*Continued.*

A testator having bequeathed to his son, who at the date of the testator's death was an infant, two sums of £15,000 when he attained the age of twenty-five and thirty years respectively, and given three-fourteenths of his converted residuary estate upon trusts which made the son tenant for life, the question arose whether the contingent legacies carried interest for any and what period.

HELD—that neither of the legacies carried interest.

IN RE ABRAHAMS; ABRAHAMS v. BENDON, [1911] 1 Ch. 108; [1910] W. N. 237; 103 L. T. 532; 54 Sol. Jo. 874—Eve, J.

#### XXV. SURVIVORSHIP.

[No paragraphs in this vol. of the Digest.]

#### XXVI. EXERCISE OF POWER OF APPOINTMENT.

See also POWERS.

48. *Appointment of Personal Estate—Appointment of Real Estate—Applicability to Real Estate Converted in Equity—No Real Estate Subject to Power.*—Where a power of appointment of personal estate, exercised in a will, is in all respects appropriate to the description of the property and the power, the Court will not remove the proceeds of sale of real estate from the appointment of personal estate and place it under an appointment in the will of real estate merely because the testatrix has attempted to deal with a class of property which in fact she did not possess.

IN RE IRVING; IRVING v. BALDEN, 129 L. T. [Jo. 572—Eve, J.]

#### XXVII. ANNUITIES.

49. *Property Settled by Will—Estate Liable for Annuity—Annuitant's Interest in the Estate—Tenants for Life and Remaindermen—Income and Corpus—Apportionment.*—J. P. covenanted that he or his executors would pay the annual sum of £250 until certain events. By his will he gave the residue of his property amongst his children, but directed that a certain portion should be held upon trust for them with a gift over.

HELD—that each instalment of the annuity should be treated separately and that there must be ascertained what sum, if set aside at the testator's death and accumulated at 3½ per cent. simple interest, would have equalled the amount of the instalment, and that so much must be paid out of the capital of the estate and the remainder out of income.

In re Perkins ([1907] 2 Ch. 596) followed.

IN RE POYSER, LONDON v. POYSER, [1910] 2 Ch. [444; 79 L. J. Ch. 748; 103 L. T. 134—Parker, J.]

50. *Gift of Life Annuities Out of Income of Trust—Gift of Surplus Income—Income Insufficient to pay Annuities—Death of Some Annuitants—Liability of Surplus to Pay Former Arrears.*—A testator gave his residuary estate

to trustees in trust to pay certain life annuities “out of the dividends, interest, and income of the said stocks, funds, shares, and securities” and to hold the surplus income arising from his estate upon certain other trusts. The income for many years was insufficient to pay the annuities, and it was divided amongst the annuitants *pro rata*. Several of the annuitants having died, there was again a surplus income after paying the surviving annuitants.

HELD—that the surplus income must be paid to the beneficiaries of the surplus income with no liability to take up the arrears of annuities in previous years.

IN RE COOK, COOK v. DAY, 129 L. T. Jo. 133—[Parker, J.]

#### XXVIII. CHARITABLE BEQUESTS.

See also Nos. 42, 43, *supra*; CHARITIES.

51. *Liquidation of Debts on Chapels—Debts Incurred before and after Testator's Death.*—A testator bequeathed his residuary estate to trustees “upon trust for the Glamorganshire Welsh Union Northern District of Welsh Congregationalists . . . to be applied towards the liquidation of the debts of such of the Welsh Congregational chapels within the area hitherto covered by them as they shall, in conjunction with my trustees, think most deserving of assistance.”

HELD—that the application of the residuary estate was not limited to debts due at the testator's death on chapels existing at the death, but extending to debts and liabilities on chapels within the prescribed area, whether such debts and liabilities were incurred, or the chapels built, before or after the testator's death.

IN RE WILLIAMS, JAMES v. WILLIAMS, 26 [T. L. R. 307—Warrington, J.]

52. *Mistake in Name of Institution.*—A testator gave a share in the residue of his estate to “The Society for Cruelty to Animals in the Parish of Cheltenham.” There used to be a “Cheltenham Society for the Prevention of Cruelty to Animals,” which was afterwards amalgamated with the Royal Society for the Prevention of Cruelty to Animals.

HELD—that the Royal Society for the Prevention of Cruelty to Animals was entitled to the gift on its undertaking to use the money for the benefit of its Cheltenham branch.

IN RE MARCHANT, WEAVER v. ROYAL SOCIETY [FOR THE PREVENTION OF CRUELTY TO ANIMALS, 54 Sol. Jo. 425—Parker, J.]

#### XXIX. CONDITIONAL WILL.

53. *Will Made in Terms Subject to Happening of Event—Possibility of Event Stated as Reason for Making Will—Evidence of Adherence.*—Where a will is made in terms subject to the happening of an event, that event must occur before the will can become operative; but if the possibility of an event happening is stated merely as the reason for making the will, the will becomes operative whether the event happens or not.

**XXIX. Conditional Will—Continued.**

If the language used in a testamentary document is ambiguous, the Court is entitled to take into consideration declarations by the testator as to his intentions.

VINES *v.* VINES AND OTHERS, [1910] P. 147; [79 L. J. P. 25; 102 L. T. 141; 26 T. L. R. 257; 54 Sol. Jo. 272—Bigham, Pres.

**XXX. MUTUAL WILLS.**

See DEPENDENCIES, No. 5.

**XXXI. CONFLICT OF LAWS.**

See EXECUTORS, No. 13.

**XXXII. MISCELLANEOUS.**

54. *Accumulations—Construction—Period of Accumulation—Share of Child.*—A testator by his will left annuities to each of his children till they attained the age of twenty-five, and directed that for ten years after his death the surplus income of his estate should be allowed to accumulate, and "that as each child attains the age of twenty-five years his or her income from my estate is to be, during the ten-year period of accumulation, his or her proportionate part of ninety per cent. of the income of my estate after all charges are paid . . . it being my intention that my children are to share equally in such income, but until each child attains the age of twenty-five years what would have been his or her share is to accumulate and form part of my general estate . . . subject to the preceding provisions . . . the income of each year is to be divided between my children equally, share and share alike."

HELD—that as each child attained twenty-five he or she was entitled to the prescribed share of the whole surplus income of the estate, and that the shares of children who had not yet attained twenty-five went to swell the total income, and could not be accumulated for their benefit till they became payable.

Decision of C. A. for Ontario, affirmed.

FULFORD *v.* HARDY, [1909] A. C. 570; 79 [L. J. P. C. 8; 101 L. T. 357—P. C.

55. *Legacy—Bonâ fide Purchaser—Prior Litigation—Notice—Costs—Set-off by Residuary Legatee.*—A *bonâ fide* purchaser of a legacy under a will who merely knows that there has been litigation between the legatee and the residuary legatee, but knows nothing as to its course, is not affected with notice of an equity of set-off for costs belonging to the residuary legatee.

MCCANN *v.* KERR, 44 I. L. T. 106—Cherry, L.J., [Ireland.

**WITNESSES.**

See EVIDENCE.

**WORK AND LABOUR.**

See LOCAL GOVERNMENT, I. (a).

**WORKING CLASSES,  
HOUSING OF.**

See PUBLIC HEALTH.

**WORKSHOPS.**

See FACTORIES AND WORKSHOPS.

**WRECK.**

See ADMIRALTY; SHIPPING AND NAVIGATION.

**WORDS.**

"Absolutely entitled."

See COMPULSORY PURCHASE, No. 3.

"Abutting on."

See LOCAL GOVERNMENT, Nos. 13, 14; RAILWAYS, No. 2.

"Accident."

See MASTER AND SERVANT, I. (1) (a).

"Actually transferred."

See BANKRUPTCY, No. 31.

"Actual possession."

See SETTLEMENTS, No. 13.

"Agricultural purpose."

See HIGHWAYS, No. 20.

"Allotment."

See COMPANIES, No. 33.

"Animal or article."

See FOOD AND DRUGS, No. 15.

"Annual value of premises."

See METROPOLIS, No. 19; REVENUE, No. 6.

"Arrangement or compromise."

See COMPANIES, No. 9.

**WINDING-UP.**

See BUILDING SOCIETIES; COMPANIES.

Words — *Continued.*

"Bags or other instruments."

*See FISHERIES, No. 1.*

"Beneficially employed."

*See EDUCATION, No. 11.*

"Carriage."

*See REVENUE, Nos. 1, 2, 3.*

"Cash value."

*See DEATH DUTIES, No. 3.*

"Chartreuse."

*See TRADE MARKS, No. 9.*

"Chattel."

*See CRIMINAL LAW, No. 68.*

"Claims."

*See MASTER AND SERVANT, No. 134.*

"Cleaning of machinery."

*See FACTORIES, No. 4.*

"Clear working day of twenty-four hours."

*See SHIPPING, No. 30.*

"Company in the United Kingdom."

*See TRUSTS, No. 8.*

"Condonation."

*See MASTER AND SERVANT, No. 139.*

"Contract of service."

*See MASTER AND SERVANT, I. 1, (r)*

"Conviction."

*See CRIMINAL LAW, No. 96.*

"Costermonger, street hawker, or itinerant trader."

*See METROPOLIS, No. 10.*

"Costs of execution."

*See BANKRUPTCY, No. 19.*

"Court."

*See PUBLIC HEALTH, No. 1.*

"Criminal cause or matter."

*See EXTRADITION, No. 2.*

"Cul de sac."

*See LOCAL GOVERNMENT, No. 17.*

"Current-market prices."

*See LANDLORD AND TENANT, No. 21.*

"Day."

*See SHIPPING, No. 30.*

"Dead freight."

*See SHIPPING, No. 35.*

"Delivery as required."

*See SALE OF GOODS, No. 1.*

"Demised premises."

*See LANDLORD AND TENANT, No. 19.*

"Deserted."

*See POOR LAW, No. 5.*

"Diamine."

*See TRADE MARKS, No. 5.*

"Dispute arising at loading ports."

*See SHIPPING, No. 27.*

"Distinctive mark."

*See TRADE MARKS, I. (2).*

"Domestic building."

*See LOCAL GOVERNMENT, No. 16.*

"Domestic purposes."

*See METROPOLIS, Nos. 16, 18.*

"Double possibilities."

*See PERPETUITIES, No. 3.*

"Drain."

*See HIGHWAYS, No. 8; SEWERS AND DRAINS, No. 1.*

"Earnings."

*See MASTER AND SERVANT, No. 37.*

"Employer."

*See MASTER AND SERVANT, Nos. 116, 119, 120.*

"Erection."

*See LOCAL GOVERNMENT, No. 18.*

"Exclusive right."

*See DEPENDENCIES, No. 21.*

"Exposing a child."

*See CRIMINAL LAW, No. 52.*

"Fair, proper, and workmanlike manner."

*See MINES, No. 3.*

"Fancy bread."

*See FOOD, No. 16.*

"Found a bed."

*See WILLS, No. 17.*

"Found on the premises."

*See GAMING, No. 7.*

"Frequenting and using."

*See GAMING, No. 9.*

"Game."

*See GAME, No. 3.*

"Gas works and plant."

*See GAS, No. 1.*

"Gramophone."

*See TRADE MARKS, No. 6.*

Words—*Continued.*

- "Grounding or stranding."  
*See* INSURANCE, No. 13.
- "Habitual criminal."  
*See* CRIMINAL LAW, I. (g).
- "Harsh and unconscionable."  
*See* MONEY, No. 13.
- "House porter."  
*See* REVENUE, No. 5.
- "Idiot."  
*See* CRIMINAL LAW, No. 82.
- "Imbecile."  
*See* CRIMINAL LAW, No. 82.
- "Improvement."  
*See* PATENTS, No. 5.
- "Income."  
*See* WILLS, No. 45.
- "In, or abutting on, or adjoining."  
*See* LOCAL GOVERNMENT, Nos. 13, 14.
- "Itala."  
*See* TRADE MARKS, No. 7.
- "Landlord."  
*See* LANDLORD AND TENANT, No. 6.
- "Lawful public meeting."  
*See* HIGHWAYS, No. 14.
- "Legacy."  
*See* DEATH DUTIES, No. 11.
- "Maintain and keep efficient."  
*See* EDUCATION, Nos. 1, 5, 6.
- "Male servant."  
*See* REVENUE, No. 5.
- "Manufacturing process."  
*See* FACTORIES, No. 2.
- "Margarine."  
*See* FOOD, No. 17.
- "Meeting."  
*See* COMPANIES, No. 29.
- "Mercantile agent."  
*See* AGENCY, No. 4.
- "Merchantable quality."  
*See* SALE OF GOODS, No. 1.
- "Mineral."  
*See* MINES, Nos. 9, 10, 11.
- "Monopoly of trade."  
*See* COMPANIES, No. 8.
- "Narrow channel."  
*See* SHIPPING, No. 44.
- "Navigates."  
*See* DEPENDENCIES, No. 8.
- "Net."  
*See* STOCK EXCHANGE, No. 1.
- "New or original."  
*See* PATENTS AND DESIGNS, No. 3.
- "Next of kin."  
*See* WILLS No. 28.
- "No sufficient distress."  
*See* LANDLORD AND TENANT, No. 7.
- "Occupier."  
*See* RATES, No. 10.
- "Ordinary matter connected with partnership business."  
*See* PARTNERSHIP, No. 2.
- "Original design."  
*See* PATENTS AND DESIGNS, No. 3.
- "Orlwoola."  
*See* TRADE MARKS, No. 4.
- "Outgoings."  
*See* LANDLORD AND TENANT, No. 20 ;  
 SALE OF LAND, No. 2.
- "Owner."  
*See* METROPOLIS, No. 21 ; PUBLIC  
 HEALTH, No. 5.
- "Parent."  
*See* EDUCATION, No. 12.
- "Payment, allowance or benefit."  
*See* MASTER AND SERVANT, No. 16.
- "Perfection."  
*See* TRADE MARKS, No. 3.
- "Persistent cruelty."  
*See* HUSBAND AND WIFE, No. 42.
- "Person."  
*See* COMPANIES, No. 48 ; INFANTS,  
 No. 4.
- "Plate."  
*See* REVENUE, No. 4.
- "Plate and plated articles."  
*See* WILLS, No. 18.
- "Possibility upon a possibility."  
*See* PERPETUITIES, No. 3.
- "Primus."  
*See* TRADE MARKS, No.



Words—*Continued.*

"Probate duty."

*See* DEATH DUTIES, No. 7.

"Proceeding."

*See* SHIPPING, No. 41.

"Profits."

*See* COMPANIES, No. 70.

"Propelled by steam."

*See* DEPENDENCIES, No. 8.

"Provision merchant."

*See* TRADE, No. 4.

"Public place."

*See* GAMING, Nos. 9, 10, 11.

"Public trust."

*See* CHARITIES, No. 2.

"Purchase money."

*See* SALE OF LAND, No. 4 ; WILLS  
No. 21.

"Railway purposes."

*See* METROPOLIS, No. 18.

"Reasonable facilities."

*See* RAILWAYS, No. 3A.

"Registered land."

*See* REAL PROPERTY, No. 7.

"Regular apprenticeship."

*See* MASTER AND SERVANT, No. 140.

"Remuneration."

*See* MASTER AND SERVANT, No. 118.

"Residence."

*See* LUNATICS, No. 1.

"Residuary legatee."

*See* WILLS, No. 23.

"Respectable and responsible person."

*See* LANDLORD AND TENANT, No. 24.

"Royal."

*See* TRADE MARKS, No. 10.

"Running days saved."

*See* SHIPPING, No. 9.

"Sale."

*See* AUCTIONS, No. 2.

"School ceasing to exist."

*See* CHARITIES, No. 3.

"Seaman."

*See* MASTER AND SERVANT, No. 126.

"Seduction."

*See* CRIMINAL LAW, No. 79.

"Serious and permanent disablement."

*See* MASTER AND SERVANT, No. 103.

"Serious and wilful misconduct."

*See* MASTER AND SERVANT, I. 1, (p).

"Setting up counterclaim."

*See* SET-OFF AND COUNTERCLAIM,  
No. 2.

"Sewer."

*See* HIGHWAYS, No. 7 ; SEWERS  
AND DRAINS, No. 1.

"Share."

*See* EXECUTORS, No. 21.

"Sole and exclusive use."

*See* ELECTIONS, No. 13.

"Sole licence."

*See* COPYRIGHT, No. 3.

"Specially qualified."

*See* MEDICINE, Nos. 1, 2, 3.

"Standard."

*See* DEPENDENCIES, No. 11.

"Stored or kept."

*See* INSURANCE, No. 4.

"Stream."

*See* WATERS, No. 4.

"Street."

*See* GAMING, Nos. 13, 14.

"Subject thereto."

*See* SETTLEMENTS, No. 5.

"Suitable employment."

*See* MASTER AND SERVANT, No. 14.

"Superior court."

*See* EXTRADITION, No. 3.

"Supply of electricity."

*See* ELECTRIC LIGHTING, No. 1.

"Terms net cash."

*See* SALE OF GOODS, No. 12.

"Unexpired term."

*See* INTOXICATING LIQUORS, No. 5.

"Unintentional omission."

*See* PATENTS, No. 6.

"Unjust and oppressive."

*See* EXTRADITION, Nos. 1, 4.

**Words—Continued.****"Usual trade name."***See* MONEY AND MONEY-LENDERS,  
Nos. 2, 3.**"Vessel."***See* SHIPPING, Nos. 24, 63.**"Watercourse."***See* HIGHWAYS, No. 7 ; WATERS AND  
WATERCOURSES, No. 1.**"Wilful disobedience."***See* CORPORATIONS, No. 1.**"Within six months."***See* TIME, No. 1.**"Workman."***See* MASTER AND SERVANT, I. 1, (r).**"Work undertaken by principal."***See* MASTER AND SERVANT, No. 106.



# ALPHABETICAL LIST OF CASES AFFIRMED, REVERSED, OVERRULED, FOLLOWED, OR CONSIDERED, IN THE CASES DIGESTED IN THIS VOLUME.

(With Contemporaneous References.)

A.	COL.	COL.
<b>Abram Coal Co. v. Southern</b> ([1903] A. C. 306; 72 L. J. K. B. 691; 89 L. T. 103; 19 T. L. R. 579) followed.		<b>Atkins v. Hutton</b> (decision of Div. Ct.) reversed . . . . . 317, 509
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<b>Allan v. Thomas Spowart &amp; Co., Ltd.</b> ((1906) 8 F. 811) approved and followed.		<i>East Barnet Valley Urban District Council v. Stallard</i> . . . . . 549
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<b>Allen v. Flood</b> ([1898] A. C. 1; 67 L. J. Q. B. 119; 62 J. P. 595; 77 L. T. 717; 46 W. R. 258; 14 T. L. R. 125) considered and applied.		<i>King's County County Council v. Kennedy</i> 254
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<b>Amalgamated Society of Railway Servants v. Osborne</b> ([1909] 1 Ch. 163; 78 L. J. Ch. 204; 99 L. T. 945; 25 T. L. R. 107; 53 Sol. Jo. 98—decision of C. A.) affirmed . . . . . 610		<i>Winans v. Attorney-General</i> . . . . . 158
<b>Anderson v. Bank of British Columbia</b> ((1876) 2 Ch. D. 644; 45 L. J. Ch. 449; 35 L. T. 76; 24 W. R. 624—C. A.) approved.		<b>Attorney-General v. London and North-Western Ry. Co.</b> ([1900] 1 Q. B. 78; 69 L. J. Q. B. 26; 63 J. P. 772; 81 L. T. 649; 16 T. L. R. 30—C. A.) approved.
<i>Jones v. Great Central Ry. Co.</i> . . . . . 178		<i>Attorney-General v. Birmingham, Tame, and Rea District Drainage Board</i> . . . . . 287
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<b>Attorney-General v. Walthamstow Urban District Council</b> ((1895) 11 T. L. R. 533) followed.		<b>Barnes v. Youngs</b> ([1898] 1 Ch. 414; 67 L. J. Ch. 260; 46 W. R. 332) commented on.	
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<b>Attorney-General v. Wimbledon House Estate Co.</b> ([1904] 2 Ch. 34; 73 L. J. Ch. 593; 68 J. P. 341; 91 L. T. 163; 20 T. L. R. 489; 2 L. G. R. 826) approved.		<i>In re Dehaynin</i> . . . . . 631	
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<b>Ayr Harbour Trustees v. Oswald</b> ((1883) 8 App. Cas. 623) distinguished.		<i>Betts v. Stevens</i> . . . . . 599	
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B.		<i>Carroll v. Harrison</i> . . . . . 450	
<b>Baker v. Ambrose</b> ([1896] 2 Q. B. 372; 65 L. J. Q. B. 589) applied.		<b>"Bellanoch," The</b> ((1907) A. C. 269; 76 L. J. P. 160; 97 L. T. 315) cited.	
<i>In re Bagley</i> . . . . . 32		<b>"Corinthian," The</b> . . . . . 574	
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<b>Bankes v. Small</b> ((1887) 36 Ch. D. 716; 56 L. J. Ch. 832; 57 L. T. 292; 35 W. R. 765—C. A.) considered.		<b>Bender v. SS. "Zent," Owners of</b> ([1909] 2 K. B. 41; 78 L. J. K. B. 533; 100 L. T. 639—C. A.) distinguished.	
<i>In re Otiley's Estate</i> . . . . . 513		<i>Rice v. Owners of Ship "Swansea Vale"</i> 371	
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<i>In re Canney's Trusts; Mayers v. Strover</i> . . . . .	650	<b>Barnes v. Nunnery Colliery Co., Ltd.</b> . . . . .	375
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<b>Boosey v. Whight</b> ([1900] 1 Ch. 122; 69 L. J. Ch. 66; 81 L. T. 571; 16 T. L. R. 82; 48 W. R. 228) followed.		<b>British United Shoe Manufacturing Co., Ltd. v. Simon Collier, Ltd.</b> (25 T. L. R. 415; 26 R. P. C. 534—decision of C. A.) affirmed . . . . .	460
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<b>Bowles, In re; Page v. Page</b> ([1905] 1 Ch. 371; 74 L. J. Ch. 338; 92 L. T. 556) applied.		<i>In re Gentry, sub nom. In re A Debtor; Ex parte Petitioning Creditors and Official Receiver</i> . . . . .	34
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<b>Brown v. Dunstable Corporation</b> ([1899] 2 Ch. 378; 68 L. J. Ch. 498; 63 J. P. 519; 47 W. R. 538; 80 L. T. 650; 15 T. L. R. 386) applied.		<i>Higgins v. King's Proctor; King's Proctor v. Carter, sub nom. Higgins v. Higgins, Carter v. Carter</i> (King's Proctor intervening) . . . . .	267
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<b>Clemow, In re; Yeo v. Clemow</b> ([1900] 2 Ch. 182; 69 L. J. Q. B. 522; 48 W. R. 541; 82 L. T. 550) explained.		<i>In re Enoch and Zaretzky, Bank &amp; Co.'s Arbitration</i> . . . . .	21
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<b>Cresswell, In re; Parkin v. Cresswell</b> (1883) 24 Ch. D. 102; 52 L. J. Ch. 798; 49 L. T. 590) followed.		<i>In re Discoverers Finance Corporation, Ltd.; Lindlar's Case</i> . . . . . 94	
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<i>In re Plumpton; Underhill v. Plumpton</i> 266, 544		<i>In re Lewis; Lewis v. Lewis</i> . . . . . 628	
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<b>Forster v. Baker</b> ([1910] 2 K. B. 636; 79 L. J. K. B. 664; 102 L. T. 522; 26 T. L. R. 421, C. A.) appeal from Bray, J., dismissed . . . . . 62	<i>Kelly v. Larkin</i> . . . . . 3	
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<b>Fraser, In re; Yeates v. Fraser</b> ((1883) 22 Ch. D. 827; 52 L. J. Ch. 469; 48 L. T. 187; 31 W. R. 375) followed.	<b>General Bill Posting Co. v. Atkinson</b> ([1909] A. C. 118; 78 L. J. Ch. 77; 99 L. T. 943; 25 T. L. R. 178) applied.	
<i>In re Elliott; Raven v. Nicholson</i> . . 59	<i>Measures Brothers, Ltd. v. Measures</i> . . 77	
<b>Freeman, In re; Hope v. Freeman</b> ([1910] 1 Ch. 681; 79 L. J. Ch. 110; 101 L. T. 780—decision of Joyce, J.) affirmed . . . . . 644	<b>Gentry, In re, sub nom. In re A Debtor; Ex parte Petitioning Creditors and Official Receiver</b> (C. A.—decision of Div. Ct.) reversed . . . . . 34	
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<b>Glasdir Copper Mines, Ltd., <i>In re</i></b> ([1906] 1 Ch. 365; 75 L. J. Ch. 109; 94 L. T. 8; 22 T. L. R. 101; 13 Manson, 41—C. A.) discussed.		<b>Kish v. Taylor</b> . . . . .	565, 570
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<b>Glory Paper Mills Co., Ltd., <i>In re</i>; Dunster's Case</b> ([1894] 3 Ch. 473; 63 L. J. Ch. 885; 71 L. T. 528; 43 W. R. 164; 7 R. 456; 1 Manson, 438) followed.		<b>London and North Western Ry. Co. v. Hawley Park Coal and Cannel Co.</b> 501	
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<b>Ismay, Imrie &amp; Co. v. Williamson</b> ([1908] A. C. 437; 77 L. J. P. C. 107; 99 L. T. 595; 24 T. L. R. 881; 52 Sol. Jo. 713) applied.		<b>Keates v. Lewis Merthyr Consolidated Collieries, Ltd.</b> ([1910] 1 K. B. 386; 79 L. J. K. B. 283; 102 L. T. 40; 74 J. P. 38; 26 T. L. R. 169—decision of Div. Ct.) affirmed .	399
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<b>Jackson's Settled Estate, In re</b> ([1902] 1 Ch. 258; 71 L. J. Ch. 154; 85 L. T. 625; 50 W. R. 235; 18 T. L. R. 168) applied.		<i>Pillington v. Power</i> . . . .	477
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<b>Joseph v. Joseph</b> ((1897) 76 L. T. 236) approved.			
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<i>Thorman v. Doughty Steamship Co., Ltd.</i> 569	<i>Hewitt v. Owners of Ship "Duchess"</i> 371
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<b>Llangattock (Lord) v. Watney, Combe, Reid &amp; Co., Ltd.</b> ([1910] 1 K. B. 236; 79 L. J. K. B. 233; 101 L. T. 766; 74 J. P. 73; 26 T. L. R. 125; 54 Sol. Jo. 116—decision of C. A.) affirmed . . . 300	<b>M'Gonigle v. M'Gonigle</b> ([1910] 1 I. R. 300)—affirmed on appeal, C. A., Ireland 649
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<b>London Printing and Publishing Alliance, Ltd. v. Cox</b> ([1891] 3 Ch. 291; 60 L. J. Ch. 707) approved.	
<i>Neilson v. Horniman and Others</i> . . . 111	
<b>Lord Advocate v. Sawers</b> ((1898) 25 Sc. 242; 35 Sc. L. R. 190) approved.	
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<b>Main Colliery Co., Ltd. v. Davies</b> ([1900] A. C. 358; 69 L. J. Q. B. 755; 83 L. T. 83; 16 T. L. R. 460; 65 J. P. 20) followed.		<i>In re The Discoverers Finance Corporation, Ltd.; Lindlar's Case</i> . . . . .	94
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<b>Marchant, In re</b> ([1908] 1 K. B. 998; 77 L. J. K. B. 695; 98 L. T. 823; 24 T. L. R. 375; 52 Sol. Jo. 314—C. A.) distinguished.			
<i>Yonge v. Toynbee</i> . . . . .	485	<b>Mexican and South American Mining, In re; Lund's Case</b> ((1859) 27 Beav. 465; 28 L. J. Ch. 628; 5 Jur. (N. S.) 400; 7 W. R. 333) overruled.	
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<b>Miller</b> , <i>In re</i> ([1893] 1 Q. B. 327; 62 L. J. Q. B. 324; 68 L. T. 367; 57 J. P. 469; 41 W. R. 243; 10 Moor. 21; 4 R. 256—C. A.) applied.		<b>Morley</b> , <i>In re</i> ([1875] L. R. 20 Eq. 17; 32 L. T. 524; 23 W. R. 532) applied.	
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<b>North v. Percival</b> ([1898] 2 Ch. 128 ; 67 L. J. Ch. 321 ; 78 L. T. 615 ; 46 W. R. 552) questioned.		<i>In re Hillman ; Ade v. Hillman</i> . . . . .	646
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<b>North British Ry. Co. v. Budhill Coal and Sandstone Co.</b> ([1909] S. C. 277 ; 46 Sc. L. R. 178) reversed . . . . .	422	<i>In re Edwards ; Lloyd v. Boyes</i> . . . . .	653
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<b>Pitts v. Michelmores</b> ([1909] 2 K. B. 244; 101 L. T. 188; 73 J. P. 313; 25 T. L. R. 492; 7 L. G. R. 518; 2 Smith, Reg. 130—C. A.) followed.		<i>R. v. Hardy</i> . . . . . 143	
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<b>Potts, <i>In re</i>; <i>Ex parte</i> Taylor</b> ([1893] 1 Q. B. 648; 62 L. J. Q. B. 392) applied.		<i>R. v. White</i> . . . . . 144	
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<b>Robinson v. Marquis of Bristol</b> ([1851] 11 C. B. 241; 22 L. J. C. P. 21; 16 Jur. 889) considered.			
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